

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:12-13650 William E Morales**

**Chapter 13**

**#36.00** Trustee's motion to dismiss case due to expiration of plan  
fr. 10/3/17; 12/12/17

Docket 116

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

William E Morales

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:12-16246 Javier Pezqueda and Blanca Pezqueda**

**Chapter 13**

**#37.00** Trustee's motion to dismiss case due to expiration of plan

fr. 11/7/17; 12/12/17

Docket 63

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Javier Pezqueda

Represented By  
L. Walker Van Antwerp III

**Joint Debtor(s):**

Blanca Pezqueda

Represented By  
L. Walker Van Antwerp III

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:12-16627 John Morgan Funkhouser**

**Chapter 13**

**#38.00** Trustee's motion to dismiss case

Docket 59

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 1/3/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John Morgan Funkhouser

Represented By  
Cynthia L Gibson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#39.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17

Docket 68

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14282 Juan Bautista**

**Chapter 13**

**#40.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 11/7/17

Docket 48

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Bautista

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#41.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17

Docket 52

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13714 Mitchell S. Cohen**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 6/13/17; 8/8/17; 11/7/17

Docket 87

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mitchell S. Cohen

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13756 Gerardo Tamariz**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17

Docket 55

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gerardo Tamariz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11712 Alfonso Ruiz Cruz**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17

Docket 47

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfonso Ruiz Cruz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:16-13051 Neli Maria Negrea**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 7/11/17; 9/12/17; 10/3/17; 12/12/17

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Neli Maria Negrea

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 11/7/17

Docket 47

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12200 Artem Sarkisyan**

**Chapter 13**

**#47.00** Motion Motion for Hardship Discharge Pursuant to 11 U.S.C. sections 1328(b) & 1328(h)

Docket 43

**\*\*\* VACATED \*\*\* REASON: Calendared in error. Hearing re-noticed for 11:30 AM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Artem Sarkisyan

Represented By  
Arsen Pogosov

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:12-13650 William E Morales**

**Chapter 13**

**#48.00** Debtor's motion re: objection to claim number 3-1 by claimant Bayview Loan Servicing, LLC., a Servicing Agent for Federal National Mortgage Association, it's Successors and/or Assigns; request claim be disallowed

fr. 11/7/17; 12/12/17

Docket 120

**Tentative Ruling:**

On December 29, 2017, the Court entered an order [doc. 139] granting the Motion noted in the Court's prior ruling. Have the parties resolved this objection to claim 3-1?

**Ruling from 12/12/17**

On December 4, 2017, Bayview Loan Servicing, LLC ("Bayview"), as Servicing Agent for Federal National Mortgage Association, filed a *Motion to Approve Loan Modification Agreement or for an Order Permitting Parties to Enter into Such an Agreement* ("Motion") [doc. 134]. In light of this Motion, have the debtor and Bayview resolved the pending objection to claim 3-1?

**Party Information**

**Debtor(s):**

William E Morales

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:12-16246 Javier Pezqueda and Blanca Pezqueda**

**Chapter 13**

**#49.00** Order to show cause why debtors' counsel should not be sanctioned for failure to appear at hearing on trustee's motion to dismiss

Docket 70

**Tentative Ruling:**

On August 31, 2017, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the debtors' case ("Motion to Dismiss") [doc. 63]. On October 2, 2017, the debtors filed an opposition to the Motion to Dismiss [doc. 65]. On November 2, 2017, the debtors filed a motion to modify their chapter 13 plan ("Motion to Modify") [doc. 67].

On November 7, 2017, the Court held an initial hearing on the Motion to Dismiss. In light of the pending Motion to Modify, the Court continued the hearing to December 12, 2017. On November 8, 2017, the Trustee filed her comments on the Motion to Modify [doc. 68]. On December 11, 2017, the debtors filed a declaration of non-opposition to the Motion to Modify [doc. 69].

On December 12, 2017, the Court held a continued hearing on the Motion to Dismiss. Although an order granting the Motion to Modify had not been entered, the debtors' counsel did not appear.

On December 14, 2017, the Court issued an *Order to Show Cause Why Debtors' Counsel Should Not Be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss* (the "OSC") [doc. 70], on the grounds that the debtors' counsel failed to appear at the hearing on the chapter 13 trustee's motion to dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). The debtors' counsel was ordered to explain his failure to appear and to file and serve on the debtor a written response to the OSC no later than December 26, 2017.

The debtors' counsel filed his response [doc. 73]. In the response, the debtors' counsel stated that he had a scheduling conflict on December 12, 2017 and only became aware of this conflict the day before. The debtors' counsel filed the declaration of non-opposition to the Motion to Modify and uploaded an order on the Motion to Modify, in which the debtors' agreed to the Trustee's request for an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Javier Pezqueda and Blanca Pezqueda Chapter 13**

additional \$5.00. The debtors' counsel did not have time to arrange for appearance counsel and hoped that the Court would check the docket and see that the matter had been resolved.

It is this Court's policy that if the chapter 13 trustee files a motion to dismiss, the Court will grant only one continuance of the hearing on the motion to dismiss without requiring an appearance by the debtor's counsel. **If an order granting the motion to modify has not been entered**, and the chapter 13 trustee has not agreed beforehand to withdraw a motion to dismiss, **the debtor's counsel must appear at any continued hearing thereon**. These policies are designed to encourage counsel to obtain Court approval of a motion to modify in a timely manner.

If the debtors' counsel or an appearance attorney appears at the continued motion to dismiss hearing on January 9, 2018 at 11:00 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued motion to dismiss hearing, and an order granting the Motion to Dismiss has not been entered, the Court may consider imposing sanctions on the debtors' counsel.

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

**Debtor(s):**

Javier Pezqueda

Represented By  
L. Walker Van Antwerp III

**Joint Debtor(s):**

Blanca Pezqueda

Represented By  
L. Walker Van Antwerp III

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:15-13149 Brian Patrick Sullivan**

**Chapter 13**

**#50.00** Daniel Sherlock & Jason Blaylock's motion to reassign related case of Brian Sullivan from the Northern Division to the San Fernando Valley Division

Docket 70

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

***A. The First Bankruptcy Case***

On August 10, 2012, Brian Sullivan ("Debtor") filed a voluntary chapter 7 case (the "First Bankruptcy Case") [1:12-bk-17247-VK]. In the First Bankruptcy Case, Debtor listed a total of \$1,235,410.47 in secured debt in his schedule D, a total of \$8,000 in unsecured priority debt in his schedule E and a total of \$59,848 in unsecured debt in his schedule F [1:12-bk-17247-VK, doc. 1]. Of these debts, Debtor scheduled a total of \$418,111.47 in secured debt owed to creditors Daniel Sherlock and Jason Blaylock ("Creditors").

Creditors and Debtor had several disputes in the First Bankruptcy Case, including a motion to avoid Creditors' lien filed by Debtor [1:12-bk-17247-VK, doc. 13], motions for Federal Rule of Bankruptcy Procedure 2004 examinations filed by Creditors [1:12-bk-17247-VK, docs. 42, 83, 103], a motion for contempt against Debtor and his husband filed by Creditors [1:12-bk-17247-VK, doc. 98], a motion to disqualify Debtor's then-counsel filed by Creditors [1:12-bk-17247-VK, doc. 173] and a motion to transfer the Second Bankruptcy Case to this Court [1:12-bk-17247-VK, doc. 220]. All of these matters were contested.

In connection with the First Bankruptcy Case, Creditors also filed an adversary proceeding requesting revocation of Debtor's discharge [1:14-ap-01084-VK]. On July 17, 2015, after extensive hearings on Creditors' motion for summary judgment and a trial, the Court entered a judgment revoking Debtor's discharge [1:14-ap-01084-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**      **Brian Patrick Sullivan**  
VK, doc. 127].

**Chapter 13**

***B. The Second Bankruptcy Case***

On July 30, 2015, Debtor filed this chapter 13 petition (the "Second Bankruptcy Case") in the Northern Division. In the Second Bankruptcy Case, Debtor listed a total of \$1,080,469 in secured debt in his latest-amended schedule D [doc. 23] and a total of \$812,171.35 in unsecured debt in his latest-amended schedule F [doc. 28]. Of these amounts, Debtor listed a total of \$708,754.19 in unsecured debt owed to Creditors, but indicated that the debts were disputed.

On September 4, 2015, Creditors filed a motion to transfer the Second Bankruptcy Case to this Court [1:12-bk-17247-VK, doc. 220]. After opposition by Debtor, the Court entered an order transferring the Second Bankruptcy Case to this Court [1:12-bk-17247-VK, doc. 225].

On September 1, 2015, Creditors filed an objection to Debtor's chapter 13 plan and a request to dismiss the Second Bankruptcy Case (the "Motion to Dismiss") [doc. 18]. On December 9, 2015, the Court held a hearing on the Motion to Dismiss. At that time, the Court issued a ruling dismissing the Second Bankruptcy Case on the basis that Debtor is ineligible to be a chapter 13 debtor [doc. 48]. On January 6, 2016, the Court entered an order dismissing the Second Bankruptcy Case [doc. 58] and subsequently closed the Second Bankruptcy Case.

***C. The Third Bankruptcy Case***

On October 17, 2017, in connection with their efforts to collect from Debtor, Creditors obtained an *Order to Appear for Examination* (the "Order to Appear") from state court. Motion, Exhibit 2. The Order to Appear required Debtor's husband, Dr. David Levin, to appear for examination on November 16, 2017. *Id.*

On November 9, 2017, Debtor filed another voluntary chapter 7 petition (the "Third Bankruptcy Case") [9:17-bk-12038-PC]. In his petition, Debtor stated that he lives in Pismo Beach, California. In the Third Bankruptcy Case, Debtor listed a total of \$2,978.28 in assets [9:17-bk-12038-PC, doc. 11], all of which Debtor claimed as exempt [9:17-bk-12038-PC, doc. 12]. Debtor indicated he has no secured creditors

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**      **Brian Patrick Sullivan**  
[9:17-bk-12038-PC, doc. 13].

**Chapter 13**

In his schedule E/F, Debtor listed a total of \$546,246.58 in unsecured debt, of which \$466,806.83 was listed as owing to Creditors [9:17-bk-12038-PC, doc. 14]. Again, Debtor indicated the debt to Creditors is disputed. Other than government units and corporations with headquarters out of state, Debtor indicated that seven of his creditors were closer to the San Fernando Valley Division, whereas three of his creditors are located closer to the Northern Division. Of these three creditors, one is Debtor's husband and one is Debtor's father.

On December 4, 2017, Creditors filed a motion to reopen the Second Bankruptcy Case [doc. 68]. On the same day, Creditors filed a motion requesting a transfer of the Third Bankruptcy Case to this Court (the "Motion") [doc. 70], based on this Court's history with Debtor's prior two cases and the proximity of creditors to this Court.

On December 15, 2017, Debtor filed an opposition to the Motion (the "Opposition") [doc. 75], asserting that he lives in Pismo Beach, California and will be inconvenienced by the distance between his residence and this Court.

## **II. ANALYSIS**

Pursuant to 28 U.S.C. § 1404(a)—

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

As a preliminary matter, Debtor asserts that Debtor could have only filed his case in the Northern Division, based on Debtor's current residence, and that Creditors cannot show that the Third Bankruptcy Case "might have been brought" in the San Fernando Valley Division. 28 U.S.C. § 1404(a). However, the Court need not refer to 28 U.S.C. § 1404(a). Instead, the statute covering transfers *within the same district* is 28 U.S.C. § 1404(b). Pursuant to 28 U.S.C. § 1404(b)—

Upon motion, consent or stipulation of all parties, any action, suit or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Brian Patrick Sullivan**

**Chapter 13**

proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which [it is] pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

The plain language of § 1404(b) does not require that the Court transfer to a division where the bankruptcy case might have been brought. Rather, the Court may transfer from one division to another in its discretion (assuming venue is otherwise proper in the district).

The Local Bankruptcy Rules and the Court Manual also do not include such a requirement. Under Local Bankruptcy Rule ("LBR") 1071-1(a)(1), debtors must file a petition in the "applicable division," which is "determined by the location of the debtor's residence, principal offices, officers, and books and records, or where the majority of the debtor's assets are located based on a book value determination as set forth on the debtor's most current balance sheet." Nothing in this Rule prevents a court from reassigning a case to a different division. Instead, the Rule only covers a debtor's initial filing.

The language in the Court Manual makes clear that courts have discretion to transfer cases to a different division. Pursuant to Court Manual § 2.1(a)(4)(A), "*[u]nless otherwise ordered by the court*, a petition commencing a case under the Bankruptcy Code must be filed in the 'applicable division.'" (emphasis added).

A similar analysis is provided in General Order ("GO") 11-01, dated June 8, 2011. Pursuant to GO 11-01, if a debtor files a "related case," as defined by Local Bankruptcy Rule 1015-2(a), and "if the judge to whom such Related Case was most recently assigned is still in office," then the case is reassigned to that judge. However, "[i]f the new petition was properly filed in a division of this District different from the division in which the judge to whom the prior case was assigned now sits, the new case will be assigned to a judge in the division in which it was filed and not to the judge to whom the prior case was assigned."

If there is a request to reassign a related case, GO 11-01 states that the following

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Brian Patrick Sullivan**  
procedure shall apply:

**Chapter 13**

The judge to whom a Related Case or proceeding has been assigned may, by mutual consent, or in the absence of such consent, with the approval of the Chief Judge, order the reassignment of a Related Case or proceeding to the judge to whom a Related case or proceeding has been assigned for good cause based upon the convenience of the parties or where justice otherwise requires.

Pursuant to LBR 1015-2(a)(1), "cases are deemed 'related cases' if the earlier bankruptcy case was filed or pending at any time before the filing of the new petition, and the debtors in such cases... [a]re the same."

Here, the Second Bankruptcy Case and Third Bankruptcy Case are "related cases" as defined by LBR 1015-2(a)(1) because Debtor is the debtor in both cases. Under GO 11-01, although a new case by a debtor will not be automatically assigned to a judge presiding over that debtor's prior cases if the judge is in a different division, the case may still be reassigned to the former judge "for good cause based upon the convenience of the parties or where justice otherwise requires." In light of the authorities above, even if Debtor could have only filed in the Northern Division, the Court is not barred from transferring Debtor's case to this Court "for good cause."

"Intradistrict transfers pursuant to 28 U.S.C. § 1404(b) are discretionary transfers subject to the same analysis as under 28 U.S.C. § 1404(a) but are judged by a less rigorous standard." *Cheval Farm LLC v. Chalon*, 2011 WL 13047301, at \*2 (D. Ariz. Jan. 19, 2011) (citing *Edwards v. Sanyo Mfg. Corp.*, 2007 WL 641412, at \*1 (E.D.Ark. Feb. 27, 2007); see also *White v. ABCO Eng'g Corp.*, 199 F.3d 140, 143-44 (3d Cir. 1999) (noting that a § 1404(b) transfer "is much less cumbersome than its inter-district counterpart").

Section 1412 "is essentially the bankruptcy counterpart to § 1404(a)." *In re B.L. of Miami, Inc.*, 294 B.R. 325, 329 (Bankr. D. Nev. 2003). Pursuant to 28 U.S.C. § 1412, "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."

"Adjudication of a request for a transfer of venue under Section 1412 requires a case-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Brian Patrick Sullivan**

**Chapter 13**

by-case analysis that is subject to the broad discretion of the court." *In re TIG Ins. Co.*, 264 B.R. 661, 668 (Bankr. C.D. Cal. 2001). "The party that seeks to transfer venue bears the burden of showing by a preponderance of the evidence that transfer would be appropriate." *Id.*

"The § 1412 statutory standards for transferring a bankruptcy case invoke the 'interest of justice' and 'convenience of the parties,' but, unlike the general federal transfer statute, do not expressly include convenience of witnesses." *In re Donald*, 328 B.R. 192, 204 (B.A.P. 9th Cir. 2005). Nevertheless, "[t]he analysis of any combination of 'interest of justice' and 'convenience of parties' under § 1412 is inherently factual and necessarily entails the exercise of discretion based on the totality of the circumstances, which may include considerations regarding witnesses and the presentation of evidence." *Id.*

The following "list of non-exclusive factors" are generally considered by courts when analyzing whether to transfer a case:

- (1) proximity of creditors to Court;
- (2) proximity of debtor to Court;
- (3) proximity of witnesses necessary to administration of estate;
- (4) location of assets;
- (5) economic and efficient administration of case;
- (6) need for further administration if liquidation ensues.

*Id.*

Because both parties do not consent to the transfer of the Third Bankruptcy Case from the Northern Division to this Court, the Court must consider whether there is "good cause based upon the convenience of the parties or where justice otherwise requires." GO 11-01. This is identical to the analysis under 28 U.S.C. § 1412, which also requires the Court to determine whether the "interest of justice" and "convenience of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Brian Patrick Sullivan**

**Chapter 13**

parties" warrants transfer of a case. *Donald*, 328 B.R. at 204.

Here, there is good cause to transfer the Third Bankruptcy Case to this Court.

First, and most importantly, this Court has significant background regarding the history between these parties. The Court heard several contested motions in the First Bankruptcy Case related to the dispute between these parties, including a motion to avoid Creditors' lien [1:12-bk-17247-VK, doc. 13], motions for Federal Rule of Bankruptcy Procedure 2004 examinations filed by Creditors [1:12-bk-17247-VK, docs. 42, 83, 103], a motion for contempt against Debtor and his husband filed by Creditors [1:12-bk-17247-VK, doc. 98], a motion to disqualify Debtor's then-counsel filed by Creditors [1:12-bk-17247-VK, doc. 173] and a motion to transfer the Second Bankruptcy Case to this Court [1:12-bk-17247-VK, doc. 220].

In addition, the Court presided over Creditors' revocation of discharge action against Debtor [1:14-ap-01084-VK]. In that adversary proceeding, the Court presided over Creditors' motion for summary judgment [1:14-ap-01084-VK, doc. 70] and a trial, as a result of which the Court was exposed to an extensive record of the history between the parties.

The Court also has significant background related to the Second Bankruptcy Case. In the Second Bankruptcy Case, the Court heard the Motion to Dismiss as well as a motion for relief from the automatic stay filed by Creditors [doc. 36]. In light of the above, this Court is best situated to ensure the economic and efficient administration of case, and the Court's history with Debtor's prior two cases weighs heavily in favor of transferring the Third Bankruptcy Case to this Court.

In addition, a majority of the creditors listed in Debtor's schedule E/F, filed in the Third Bankruptcy case, are closer to this Court than to the Northern Division (excluding government creditors and lenders with corporate headquarters listed out of state). This includes Creditors, with whom Debtor is likely to have the most disputes in light of their history from the prior two cases. Creditors have already indicated that they intend to file another motion to dismiss. Moreover, Debtor continues to list the debt owed to Creditors as "disputed." If the Court will need to adjudicate issues concerning the debt owed to Creditors, at least part of the witnesses related to those disputes (Creditors) are located closer to this Court. As such, the proximity of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Brian Patrick Sullivan**

**Chapter 13**

creditors and witnesses to this Court also weighs in favor of transfer.

Although Debtor's assets appear to be located in Pismo Beach, California, Debtor has claimed as exempt all of his assets. As such, it is possible that the assets will not be liquidated, such that their location is not as important to the Court's determination regarding transfer of the Third Bankruptcy Case. The majority of the factors weighing in favor of transfer, the Court will order the transfer of the Third Bankruptcy Case to this Court.

**III. CONCLUSION**

The Court will grant the Motion and transfer the Third Bankruptcy Case to this Court. Upon entering the order granting the Motion, the Court will close this bankruptcy case. As such, the request to dismiss this case, filed by Debtor on December 15, 2017 [doc. 77], is moot.

Creditors must submit a proposed order within seven (7) days.

**Party Information**

**Debtor(s):**

Brian Patrick Sullivan

Represented By  
Alan W Forsley  
Leslie A Tos  
Paul F Ready

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12200 Artem Sarkisyan**

**Chapter 13**

**#51.00** Debtor's motion for hardship discharge pursuant to 11 U.S.C. sections 1328(b) & 1328(h)

Docket 43

**Tentative Ruling:**

Grant.

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4007(d), the Court will enter an order fixing the time to file a complaint to determine the dischargeability of any debt under 11 U.S.C. § 523(a)(6) and give no less than 30 days' notice of the time fixed to all creditors in the manner provided in FRBP 2002.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Artem Sarkisyan

Represented By  
Arsen Pogosov

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-11305 Cheryl S Orleans**

**Chapter 13**

**#52.00** Order to show cause why debtor's counsel should not  
disgorge fees for failure to perform services pursuant  
to rights and responsibilities agreement

fr. 12/12/17

Docket 47

**Tentative Ruling:**

At the prior hearing on December 12, 2017, the Court continued this matter to January 9, 2018 at 11:30 a.m.

On December 15, 2017, the debtor's case was dismissed [doc. 51]. In light of the dismissal of the debtor's case, and having considered the response to the Order to Show Cause ("OSC") filed by the debtor's counsel, the Court will discharge the OSC.

Appearances on January 9, 2018 are waived.

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

**Debtor(s):**

Cheryl S Orleans

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#53.00** Order to show cause why debtor's counsel should not disgorge fees for failure to perform services

Docket 50

**Tentative Ruling:**

On December 14, 2017, the Court issued the *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees for Failure to Perform Services* ("OSC") [doc. 50], on the grounds that Ms. Richards failed to do the following: (i) timely file a RARA; (ii) timely file the debtor's November 2017 declaration regarding deed of trust payments; and (iii) sufficiently prepare the appearance attorney to allow for proper representation of the debtor. Ms. Richards was ordered to file and serve on the debtor a written response to the OSC no later than December 26, 2017.

The debtor's counsel filed a response [doc. 55]. However, contrary to the OSC, the debtor's counsel did not serve her response on the debtor. Nor is the response supported by a declaration signed under penalty of perjury.

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12195 Daniel Stipkovich**

**Chapter 13**

**#54.00** Order to show cause hearing why debtor's counsel should not be sanctioned for failure to appear at confirmation hearing

fr. 12/12/17

Docket 35

**Tentative Ruling:**

Given that debtor's former counsel, in this dismissed case, filed a response and appeared at the previous hearing on the Order to Show Cause, and has now filed a Disclosure of Compensation of Attorney for Debtor (Form 2030) or a Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys (Form F 3015-1.7.RARA), the Court will discharge the Order to Show Cause.

Appearances on January 9, 2018 are waived.

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

**Debtor(s):**

Daniel Stipkovich

Represented By  
Hayk Grigoryan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 303**

11:30 AM

**1:17-12228 Cindy Maria Montano**

**Chapter 13**

**#55.00** Trustee's objection to homestead exemption

Docket 26

**Tentative Ruling:**

The Court will continue the hearing on this matter to **February 13, 2018 at 11:30 a.m.**

Federal Rule of Bankruptcy Procedure 4003(b)(4) states that "a copy of any objection shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney." In accordance with this provision, notice of the objection was served on the debtor's attorney via NEF on November 14, 2017. However, the chapter 13 trustee served notice of the objection on the debtor at "11856 Balboa Blvd #8, Granada Hills, CA 91344" and not the debtor's correct address, which is "11856 Balboa Blvd #108, Granada Hills, CA 91344" (emphasis added).

No later than **January 23, 2018**, the chapter 13 trustee must serve notice of the objection upon the debtor at her correct mailing address and file a corresponding proof of service.

Appearances on January 9, 2018 are waived.

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

**Debtor(s):**

Cindy Maria Montano

Represented By  
Michael D Kwasigroch

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12362 Wendall Niles**

**Chapter 13**

**#56.00** Trustee's objection to debtor's exemptions

Docket 39

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 11/27/17**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Wendall Niles

Represented By  
Shirlee L Bliss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-13086 Alfonso Cadena Palomino and Esther Veliz**

**Chapter 13**

**#57.00** Status conference; Directing compliance with applicable law; and requiring debtor(s) to explain why this case should not be converted or dismissed with 180 day bar to refiling

Docket 17

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfonso Cadena Palomino	Pro Se
-------------------------	--------

**Joint Debtor(s):**

Esther Veliz	Pro Se
--------------	--------

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12291 Saul Wilfredo Parada and Maria Idaila Parada**

**Chapter 13**

**#58.00 Chapter 13 Trustee's objection to debtors' exemptions**

Docket 23

**Tentative Ruling:**

Sustain objection and disallow claim of exemption based on California Code of Civil Procedure ("C.C.P") § 703.140(b)(6) in \$1,000 in equity in a Chase checking account, as set forth in the debtors' Schedule C filed on August 28, 2017 [doc. 1]. C.C.P. § 703.140(b)(6) provides that a judgment debtor may exempt the "aggregate interest, not to exceed [\$8,000] in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor." The debtors have not provided any evidence that their claimed exemption is proper pursuant to C.C.P. § 703.140(b)(6).

The chapter 13 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Saul Wilfredo Parada

Represented By  
Brad Weil

**Joint Debtor(s):**

Maria Idaila Parada

Represented By  
Brad Weil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 09, 2018**

**Hearing Room 301**

11:30 AM

**1:17-13428 Michael Rodriguez**

**Chapter 13**

**#59.00** Exparte application for motion to compel turnover of property of the estate and for damages and attorney's fees in the amount of \$2,250.00 for intentional violation of the automatic stay against Logix Federal Credit Union

Docket 14

**Tentative Ruling:**

In light of the secured creditor's pending application for order shortening time [doc. 17] and motion for relief from the automatic stay [doc. 18], the Court will continue the hearing on this matter to January 10, 2018 at 9:30 a.m.

Appearances on January 9, 2018 are excused.

**Party Information**

**Debtor(s):**

Michael Rodriguez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12494 Michael Evan Weiss and Lauren Michelle Weiss**

**Chapter 7**

**#1.00** Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST  
VS  
DEBTOR

fr. 12/20/17

Docket 13

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
12/22/17**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael Evan Weiss

Represented By  
Allan S Williams

**Joint Debtor(s):**

Lauren Michelle Weiss

Represented By  
Allan S Williams

**Movant(s):**

Financial Services Vehicle Trust

Represented By  
Bret D. Allen

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:12-19687 Ric Saenz and Maria Milagros Saenz**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

fr. 11/22/17; 12/6/17

Docket 71

**Tentative Ruling:**

**Ruling from 11/22/17**

Grant motion on the terms requested unless debtors are current on postpetition payments.

**Party Information**

**Debtor(s):**

Ric Saenz

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Maria Milagros Saenz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:13-12022 Aleksandr Makaryants**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

WELLS FARGO BANK NA  
VS  
DEBTOR

fr. 11/15/17

Docket 87

**Tentative Ruling:**

In his opposition [doc. 89], the debtor disputes late fees in the amount of \$453.79 as stated in the motion. However, in light of the total amount of arrearages (\$21,335.08), there appear to be grounds for granting the motion pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Aleksandr Makaryants

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13240 Damon Niles**

**Chapter 7**

**#4.00** Motion for relief from stay [UD]

SOHEIL ROWSHAN  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Damon Niles

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12772 Jeana Hogan**

**Chapter 7**

**#5.00** Motion for relief from stay [UD]

CREDITOR CLEAR INVESTMENTS LLC  
VS  
DEBTOR

Docket 13

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

Deny the movant's request for an order confirming that the automatic stay does not apply pursuant to 11 U.S.C. § 362(l). Section 362(l) is inapplicable here, as the movant has not obtained a prepetition judgment for possession as required by 11 U.S.C. § 362(b)(22).

The Court will not annul the automatic stay. Movant has not identified what, if any, acts were taken postpetition in violation of the stay.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jeana Hogan**

**Chapter 7**

Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jeana Hogan

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10024 Paulette Vonetta Moses**

**Chapter 7**

**#6.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 385

**Tentative Ruling:**

On December 14, 2016, Wells Fargo Bank, N.A. ("Movant") filed a motion for relief from the automatic stay ("First RFS Motion") as to the real property located at 22247 Criswell St., Woodland Hills, CA 91303-2406 (the "Property") [doc. 240]. On January 31, 2017, the Court entered an order granting the First RFS Motion pursuant to 11 U.S.C. § 362(d)(2) [doc. 283].

On December 15, 2017, Movant filed the pending motion for relief from stay as to the Property ("Second RFS Motion") [doc. 385]. In the Second RFS Motion, Movant argues that relief from the automatic stay is warranted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). As noted above, the Court previously granted relief from the automatic stay to Movant pursuant to § 362(d)(2).

Given the Court's prior termination of the stay as to Movant and the Property, what is the purpose of Movant filing the Second RFS Motion?

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

**Debtor(s):**

Paulette Vonetta Moses

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Lovee D Sarenas  
Annie Verdries



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12953 Dora R Torres**

**Chapter 7**

**#7.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

**Case dismissed 12/26/17**

Docket 13

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 12/26/17**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Dora R Torres

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13081 Hatteras Holdings, LLC**

**Chapter 7**

**#8.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Hatteras Holdings, LLC

Represented By  
Rob R Nichols

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Hatteras Holdings, LLC**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12401 Hossein Ali Izadmehr**

**Chapter 7**

**#9.00** Motion for relief from stay [RP]

U.S. BANK TRUST N.A.  
VS  
DEBTOR

Docket 20

**Tentative Ruling:**

There is cause to grant relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(4). The debtor filed a timely opposition [doc. 24] to the motion. However, the debtor did not attach a declaration signed under penalty of perjury attesting to the statements made in the opposition. Accordingly, the debtor has not met his burden of proof to rebut the existence of "cause" to grant relief from stay.

Movant is the beneficiary of a trust deed encumbering the real property at issue, located at 4234 Canoga Dr., Woodland Hills, CA 91364 (the "Property"). As of the filing of its motion, movant held a secured claim in the amount of \$945,716.14. Mohammed Reza Izadmehr ("Mr. Izadmehr") is the identified borrower on movant's trust deed and promissory note.

On April 22, 2011, Mr. Izadmehr filed case no. 1:11-bk-15011-GM. Mr. Izadmehr listed the Property as his residence address. On May 17, 2011, Mr. Izadmehr's case was dismissed for his failure to file schedules, statements, and/or a plan.

On June 20, 2014, Mr. Izadmehr filed case no. 1:14-bk-13061-VK. Mr. Izadmehr listed the Property as his residence address. On November 3, 2014, Mr. Izadmehr received a chapter 7 discharge.

On July 13, 2016, a notice of default was recorded against the Property. On October 17, 2016, a notice of sale was recorded, scheduling a trustee's sale for November 14, 2016.

On November 10, 2016, a few days before the scheduled trustee's sale, Mr. Izadmehr filed case no. 1:16-bk-13238-MT. Mr. Izadmehr listed the Property as his residence

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Hossein Ali Izadmehr Chapter 7**

address. On February 6, 2017, Mr. Izadmehr's case was dismissed for his failure to appear at the 341(a) meeting of creditors and/or make pre-confirmation payments.

On February 23, 2017, Mr. Izadmehr filed case no. 1:17-bk-10461-MB. Mr. Izadmehr listed the Property as his residence address. On August 21, 2017, relief from automatic stay was granted as to the Property [case no. 1:17-bk-10461-MB, doc. 31]. On October 17, 2017, Mr. Izadmehr's case was dismissed after a chapter 13 plan confirmation hearing.

On September 7, 2017, shortly after relief from the automatic stay was granted as to the Property in case no. 1:17-bk-10461-MB, Mr. Izadmehr executed a grant deed purporting to transfer to himself an 80% interest in the Property and to the debtor a 20% interest in the Property, as tenants in common. (*See* Exh. 6.)

On September 8, 2017, one day after the foregoing grant deed was executed, the debtor filed the pending case. The debtor listed the Property as his residence address.

11 U.S.C. § 362(d)(4) provides:

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 conditioning such stay—

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Hossein Ali Izadmehr**

**Chapter 7**

(4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

The Court concludes that the debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors. The recent transfer of a fractional interest in the property to the debtor, the multiple bankruptcy filings by Mr. Izadmehr and the debtor, and the dismissal of three prior bankruptcy cases affecting the Property, justify relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and the provision of *in rem* relief pursuant to 11 U.S.C. § 362(d)(4).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit an order within seven (7) days.

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

**Debtor(s):**

Hossein Ali Izadmehr

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13328 Anna Maria Prezio**

**Chapter 13**

**#9.10** Motion for relief from stay [UD]

CASHINVESTORS, LLC  
VS  
DEBTOR

Docket 8

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 1/4/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Anna Maria Prezio

Pro Se

**Movant(s):**

Cashinvestors, LLC, a CA Limited

Represented By  
Laurie Howell

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:12-19851 Mark Douglas Richards and Ana Marie Richards**

**Chapter 13**

**#10.00** Motion for relief from stay [PP]

KEYBANK N.A.  
VS  
DEBTOR

Docket 43

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mark Douglas Richards

Represented By  
Michael H Raichelson

**Joint Debtor(s):**

Ana Marie Richards

Represented By  
Michael H Raichelson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13428 Michael Rodriguez**

**Chapter 13**

**#10.10** Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION  
VS  
DEBTOR

[Shortened Notice]

Docket 18

**Tentative Ruling:**

Based on the movant's evidence, unless timely controverted by the debtor, the Court will grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2), and annul the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

If that relief is granted, movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) will be waived.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Michael Rodriguez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13428 Michael Rodriguez**

**Chapter 13**

**#10.20** Exparte application for motion to compel turnover of property of the estate and for damages and attorney's fees in the amount of \$2,250.00 for intentional violation of the automatic stay against Logix Federal Credit Union

fr. 1/9/18

Docket 14

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Michael Rodriguez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:14-10077 Oksana Grigorieva**

**Chapter 13**

**#11.00** Motion for relief from stay [AN]

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT  
VS  
DEBTOR

**Stipulation to continue filed 12/27/17**

Docket 68

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 12/29/17.  
Hearing continued to 1/24/18 at 9:30 AM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oksana Grigorieva

Represented By  
Daren M Schlecter  
Jeff Neiderman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10126 Angela Cordero Britton**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

U.S. ROF III LEGAL TITLE TRUST 2015-1  
VS  
DEBTOR

Docket 55

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Angela Cordero Britton

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#13.00** Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

**STIP FILED 12/29/17**

Docket 1

**Tentative Ruling:**

In her answer [doc. 3], filed on December 19, 2017, the defendant requested a jury trial. The parties do not have a right to a jury trial in a nondischargeability action under 11 U.S.C. § 523. *In re Hashemi*, 104 F.3d 1122, 1124-25 (9th Cir. 1996); *In re Sasson*, 424 F.3d 864, 869-70 (B.A.P. 9th Cir. 2005); and *In re Valle*, 469 B.R. 35 (Bankr. D. Idaho 2012).

In the parties' joint status report [doc. 4], the plaintiff did not indicate whether he consents to entry of a final judgment by this Court. If the plaintiff does not consent, does the plaintiff contend that the Court requires the plaintiff's consent to enter a final judgment regarding an action based on 11 U.S.C. § 523(a)(2), (a)(4) and/or (a)(6)? *See Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594 (2011).

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/15/18.

Deadline to file pretrial motions: 4/2/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 4/18/18.

Pretrial: 1:30 p.m. on 5/2/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#14.00** Status conference re: complaint to determine nondischargeability of debt 11U.S.C. §523(a)(2)(A) and § 523(a)(2)(B)

Docket 1

**Tentative Ruling:**

The plaintiff did not timely serve the summons on the defendant within seven days after the summons was issued. Fed. R. Bankr. P. 7004(e).

The plaintiff must request an alias summons from the Court. The plaintiff can obtain an alias summons from the Court by sending a request letter to Courtroom Services, Attn: Patty Garcia, 21041 Burbank Blvd., Woodland Hills, CA 91367. The plaintiff must attach to this letter official Court Form F 7004-1, having completed the top caption and clearly indicating such summons is an alias summons by interlineating "Alias" where appropriate on the form.

This alias summons must be served upon the defendant within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004(e). The plaintiff must attach to the alias summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the alias summons and the complaint and instructions to be served with that summons, the plaintiff must file a signed proof of service indicating that the alias summons and the documents to be served with that summons were timely served on the defendant.

If the plaintiff can obtain an issued alias summons from the Court by January 24, 2018, the status conference will be continued to **March 13, 2018 at 1:30 p.m.**

**Party Information**

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Grigor Chilingaryan**

**Chapter 7**

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By  
Richard W Snyder

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**1:15-11148 Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Adv#: 1:15-01102 Jocelinda Investments, LLC et al v. Mabugat

- #15.00** Motion by Plaintiffs Jocelinda Investments, LLC, La Bella Investments, LLC & Comercio, LLC for summary judgment or in the alternative summary adjudication of issues regarding plaintiffs' complaint to determine dischargeability of debt pursuant to Bankruptcy Code Sections 523(a)(2)(A), (a)(4) & (a)(6)

Docket 34

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

***A. The Parties' Agreements***

In 1999, Dr. John Chaves, the managing member of Jocelinda Investments, LLC ("Jocelinda"), La Bella Investments, LLC ("La Bella") and Comercio, LLC ("Comercio") (collectively, "Plaintiffs"), met Michael Anthony Rhomateo Mabugat ("Defendant"). Declaration of Dr. John Chaves (the "Chaves Declaration"), ¶¶ 1-2; Statement of Uncontroverted Facts ("SUF") 1-2; Request for Judicial Notice ("RJN"), Exhibit 7. Defendant told Dr. Chaves that he was a real estate developer. Chaves Declaration, ¶ 2; SUF 3; RJN, Exhibit 7.

In 2006, Defendant told Dr. Chaves that he was looking for investors for his real estate projects in Gulf Shores, Alabama and Palm Desert, California. Chaves Declaration, ¶ 3. Defendant also told Dr. Chaves that his entity, Westlake Development of Alabama, LLC ("Westlake"), owned real property in Gulf Shores, Alabama. Chaves Declaration, ¶ 3; SUF 8, RJN, Exhibit 3.

Defendant told Dr. Chaves that Defendant would guarantee payment of any money that Dr. Chaves invested, including any money Dr. Chaves would invest through one of Dr. Chaves' entities. Chaves Declaration, ¶ 3; SUF 6; RJN, Exhibit 7. Defendant also told Dr. Chaves that he and his wife had an \$88 million trust, and the trust would

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat Chapter 7**

guarantee Dr. Chaves' investments. Chaves Declaration, ¶ 4; SUF 5; RJN, Exhibit 7. Although Defendant represented he would put these terms in writing, Defendant never gave Dr. Chaves a written guarantee. SUF 7; RJN, Exhibit 7.

On March 17, 2006, based on Defendant's representations, Jocelinda entered into an agreement with Westlake whereby Jocelinda agreed to loan \$2 million to Westlake to participate in the proceeds of Westlake's condominium construction project in Gulf Shores, Alabama. Chaves Declaration, ¶ 5. At Defendant's request, Jocelinda funded the Westlake loan by transferring \$2 million to Defendant's other entity, Praetorian Development and Acquisitions, LLC ("Praetorian"), rather than paying Westlake directly. Chaves Declaration, ¶ 6; SUF 12; RJN, Exhibit 7.

In May 2006, La Bella signed an agreement with Jurassic Ventures, LLC ("Jurassic"), another entity owned by Defendant, whereby La Bella agreed to loan Jurassic \$600,000 to participate in another condominium project. Chaves Declaration, ¶ 7. Thereafter, La Bella funded the loan by transferring \$600,000 to Praetorian as requested by Defendant. Chaves Declaration, ¶ 8; SUF 13; RJN, Exhibit 7.

Comercio entered into an oral agreement to loan \$150,000 to Jurassic. Chaves Declaration, ¶ 9. Comercio later funded the loan to Jurassic by transferring \$150,000 to Praetorian as requested by Defendant. Chaves Declaration, ¶ 10; SUF 13; RJN, Exhibit 7.

***B. The State Court Litigation***

In 2008, Defendant told Dr. Chaves that the Gulf Shores project was not going to be built. SUF 14; RJN, Exhibit 7. In response, Dr. Chaves asked for Plaintiffs' money back. SUF 15; RJN, Exhibit 7. Despite telling Dr. Chaves he would refund Plaintiffs' money, Defendant never returned the funds. SUF 15; RJN, Exhibit 7.

On July 10, 2009, Plaintiffs filed a state court action against Defendant and his entities to recover damages from the unpaid loans. SUF 16; RJN, Exhibit 1. On September 7, 2011, Plaintiffs filed a first amended complaint in state court, alleging breach of fiduciary duty, fraudulent misrepresentations and fraudulent concealment, among other causes of action. SUF 17; RJN, Exhibit 2.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

***C. The State Court's Findings***

On June 10, 2014, the state court read its findings into the record (the "Oral Ruling").  
SUF 18; RJN Exhibit 3. In relevant part, the state court found:

***1. The Findings Regarding Fraud***

There are different kinds of fraud as the court just acknowledged. And the complaint – the first amended complaint breaks it down into two different types of fraud plus a related breach of fiduciary duty as to [Defendant], fraud and concealment of material facts and fraud in the inducement....

The court has no difficulty whatsoever in finding that there was a misrepresentation of a material fact relied upon by Dr. Chaves, the plaintiff, and through him his related entities that this reliance occurred to his detriment and that he suffered damage thereby.

The first issue the court will discuss is the so-called family trust fund. The court is convinced by a wide margin, far beyond the preponderance of the evidence that those statements were made by [Defendant], that there was some sort of family trust....

First of all, there is no trust, apparently, because if there was I assume someone would have brought it to the court's attention. I'm going to assume there is no trust. Why is this important? Because [Defendant's] ability to make good on the promises he was making. And Dr. Chaves so testified, was material in Dr. Chaves's decision to go forth with this investment. If he had known that there was no family trust and, again, he testified to this fact, if he had known that I don't believe he would have made these investments. As far as – so, in [and] of itself is sufficient.

When we're talking about the Gulf Shores project there is another species – I shouldn't say, "species" it's the same general type of fraud, material misrepresentation, another example of it let us say. At the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

time he was entering into agreements on behalf of Westlake he didn't own Westlake. He was – he had signed over all the interest in that company to a third party, to this Southbrook. He didn't own this. It's no different than if I purported to buy General motors in a contract. I don't own General motors. I can't buy General Motors. If I would be so rash as to represent that I did in dealing with somebody to induce them to part with their money, that would be prima facie evidence in the court's eyes of fraud.

He's representing that he owned something that he doesn't own. It's the classic story of selling the Brooklyn Bridge. You don't own the Brooklyn Bridge. You can't sell it. You don't have title to it.

He had nothing to sell, at least not with that entity.

As far as the misrepresentations go, I think that covers it.

The concealment that is alleged, I think is more appropriately directed to the Desert Gold project, which it appears as if virtually [the] entire thing had been signed away to other investors. And again, [Defendant] signed personal guarantees that all of which seemed to operate to the recovery of anything by Dr. Chaves, if there was ever unlikely except under the most rosy of propositions.

Now, the argument is made that the economy is to blame. There's certain amount of truth to that. The economy did take a mighty crash back in 2007, 2008 from which we're still trying to recover, apparently not entirely successful. "We" meaning the United States of America.

But that's not really the point. You might have gotten away with these misrepresentations, [Defendant], if the economy had been better, but that's not the point. The point is the concealment and the misrepresentations were made. They were relied upon to the detriment of the investors and they were damaged. And that's in a nutshell the essence of the cause of action fraud under either of the two theories proposed.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT...

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

***2. The Findings Regarding Misappropriation of Funds***

As to the breach of fiduciary duty, the court made some comments at the motion for nonsuit at the close of plaintiff's case in chief. And I don't see any reason to reiterate them, other than to say that it appears to the court that based on the evidence [Defendant] did have a fiduciary relationship at the point he decided to take custody of this two million dollars and hold it for the benefit of other entities and for this project that he had contracted. However, whatever his authorization to do so might have been or not been. At that point he entered into a fiduciary relationship.

It's clear that Dr. Chaves placed a great deal of trust in [Defendant]. And these are a result of representations made by [Defendant] to Dr. Chaves. These did not happen accidentally. And at the point that he represented – [Defendant] represented to Dr. Chaves that he would hold these funds he was essentially acting in a fiduciary capacity basically as a trustee for those funds.

What happened to those funds is not really in dispute. Those funds were squandered on personal related items, and for no other purpose. Mr. Buckley, the plaintiff's expert, was clear and concise and to the point. And no substantial progress was made in the court's eyes in impeaching his testimony or challenging the basis for his opinion. That based on his examination of these, I would assume, hundreds or possibly thousands of transactions in that six-month period, that essentially none of it went to the project. And all of it went to various personal expenditures by [Defendant].

...

Now, a lot of emphasis was placed on the fact that other funds came in after the fact. That [Defendant] may have intended and had the ability even to make good on these losses. Well, that's all well and good. But – it is irrelevant, as counsel for the plaintiff pointed out, it's irrelevant to what happened to the actual money that was entrusted to him.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Telling me that later on many months after the money was in essence, I don't want to say stolen, but I'm almost incapable of coming up with a better words. We'll just say missing – after the money went missing due to [Defendant's] actions, that at some later point he might have come in and made that good. ... The crime occurs when you walk out the door with the money. Your good intentions on what you plan to do tomorrow once you win the race or what have you, it really makes no difference. And it's an embezzlement, which is very similar to the criminal counterpart that happens civilly, in this case. I'm really unmoved by the statements of intent. And the fact that – actually, there was a lot of economic activity after this money was taken.

But the money that was entrusted to him was in expectation stolen by this defendant.

And the court is clear on that.

...

We had bank statements and a bunch of canceled checks and nothing else. And this would have been the time to show the court if there was any substantial use of these funds for the purpose they were entrusted to. And the fact that that didn't occur, compels the court to conclude that they were squandered, just as alleged by the plaintiffs.

SUF 18; RJN Exhibit 3. On September 18, 2014, the state court entered the first amended judgment (the "State Court Judgment"). SUF 20; RJN, Exhibit 5. In relevant part, the State Court Judgment provided that:

As to the defendant Michael Mabugat, evidence, both oral and documentary, having been presented by all parties, the cause having been argued and submitted for decision, the court rendered its decision, finding that plaintiffs have sustained their burden of proof by a preponderance of the evidence against Michael Mabugat on the First Cause of Action (Breach of Fiduciary Duty), Fourth Cause of Action (Fraud – Concealment) [and] Fifth Cause of Action (Fraud).... The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

court further found that defendant Michael Mabugat did not sustain his burden of proof on any of the Affirmative Defenses set forth in his Answer to the First Amended Complaint.

...

The court hereby grants a money judgment in favor of [Jocelinda] and against defendants [Westlake], [Praetorian] and [Defendant], jointly and severally, in the principal amount of \$2,000,000.00... for a grand total of principal and pre-judgment interest in the amount of \$3,673,987.25.

The court hereby grants a money judgment in favor of [La Bella] and against defendants [Jurassic], [Praetorian] and [Defendant], jointly and severally, in the principal amount of \$600,000.00... for a grand total of principal and pre-judgment interest in the amount of \$1,087,715.46.

The court hereby grants a money judgment in favor of [Comercio] and against defendants [Jurassic], [Praetorian] and [Defendant], jointly and severally, in the principal amount of \$150,000.00... for a grand total of principal and pre-judgment interest in the amount of \$269,148.90.

...

Plaintiffs [Jocelinda], [La Bella] and [Comercio] are jointly awarded punitive damages against [Defendant] in the amount of \$1,500,000.00, for a total judgment against him of \$6,530,851.61.

SUF 20; RJN, Exhibit 5.

***D. The State Court Appeal***

Defendant appealed the State Court Judgment. SUF 22; RJN Exhibit 7. On August 9, 2017, the appellate court issued its decision and held, in relevant part:

[Defendant] argues that the evidence is insufficient to support plaintiffs' claims for breach of fiduciary duty and fraud by concealment. In particular, he argues that there is insufficient evidence

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT...

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

of (1) a fiduciary relationship between [Defendant] and [Dr.] Chaves, and (2) actual reliance by [Dr.] Chaves on [Defendant's] nondisclosure of Northstar's entitlement to payment of \$25 million on the Palm Desert project. We conclude that any such deficiency was harmless.

The first amended complaint alleged fraud based on two theories: concealment of the Northstar agreement and false representations concerning [Defendant's] alleged \$80 million family trust. In its oral ruling, the trial court found in favor of plaintiffs and against [Defendant] on both theories. Moreover, in the absence of a written statement of decision, "[t]he doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) Thus, even without the trial court's oral ruling, we would have to infer that the court resolved the fraud claim concerning the family trust against [Defendant].

On appeal, [Defendant] presents no arguments concerning the fraud claim concerning the family trust, so we must affirm the finding against him on that claim. He also does not argue that plaintiffs recovered more on the fiduciary duty and fraud by concealment claims than they were entitled to recover on the fraud claim concerning the family trust alone, and we are not aware of any potential basis for such an argument. Thus, even if we agreed that the fiduciary duty and fraud by concealment claims were not supported by substantial evidence, we would have to affirm the judgment on the basis of the fraud claim concerning the family trust.

...

The judgment is affirmed.

SUF 24; RJN Exhibit 7.

***E. Defendant's Bankruptcy Case and this Adversary Proceeding***

On April 2, 2015, Defendant filed a voluntary chapter 7 petition. On June 26, 2015,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Plaintiffs filed a complaint requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) (the "Complaint").

On October 25, 2017, Plaintiffs filed a motion for summary judgment, requesting entry of judgment in their favor on all of their claims (the "Motion") [doc. 34]. Defendant has not timely filed a response to the Motion.

## **II. LEGAL STANDARDS**

### **A. General Motion for Summary Judgment Standard**

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248-50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. See *Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabusat**

**Chapter 7**

fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

Here, there are no genuine issue as to any material fact and, as discussed below, Plaintiffs are entitled to judgment as a matter of law pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).

**B. Issue Preclusion**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**  
a former proceeding;

**Chapter 7**

- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245).

**C. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

**D. 11 U.S.C. § 523(a)(4)**

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

***1. Fraud or Defalcation while Acting in a Fiduciary Capacity***

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796. Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... **Michael Anthony Rhomateo Mabugat**

Chapter 7

*Id.*, at fn. 7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

**2. Embezzlement**

"Federal law and not state law controls the definition of embezzlement for purposes of section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). For purposes of embezzlement, a fiduciary relationship is not required. *Id.*, at 555.

**E. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**  
conduct.") (emphasis in *Jercich*).

**Chapter 7**

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

### **III. ANALYSIS**

#### **A. 11 U.S.C. § 523(a)(2)(A)**

Plaintiffs have met their burden of proving that they are entitled to summary judgment on their 11 U.S.C. § 523(a)(2)(A) claim based on the Oral Ruling and the State Court Judgment.

##### ***1. The Issues are Identical to the Issues from the State Court Action***

Through both the Oral Ruling and the State Court Judgment, the state court held that Defendant was liable for fraud in the inducement and fraudulent concealment, two types of fraud under California law. The Oral Ruling and the State Court Judgment were based on the same facts alleged in the Complaint.

With respect to § 523(a)(2)(A), "Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing to *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law.")). The same elements apply to the two subsets of fraud at issue in the state court action: fraud in the inducement and fraudulent concealment of material facts. *See Bank of Am. Corp. v. Superior Court*, 198 Cal.App.4th 862, 870 (Ct. App. 2011) (regarding fraud based on concealment); and *Parino v. BidRack, Inc.*, 838 F.Supp.2d 900, 906 (N.D. Cal. 2011) (applying California law on fraudulent in the inducement). Based on these authorities, the issues are identical to the issues before this Court.

##### ***2. The Issues were Actually Litigated in the State Court Action***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... **Michael Anthony Rhomateo Mabugat**

**Chapter 7**

The "actually litigated" requirement addresses whether the issues were "properly raised, submitted for determination, and determined in that proceeding." *Happy Nails & Spa of Fashion Valley, L.P. v. Su*, 159 Cal. Rptr. 3d 503, 512 (Ct. App. 2013). As noted in the Oral Ruling and the State Court Judgment, all parties appeared at trial and presented evidence, both oral and documentary. Based on the Oral Ruling, the issues related to fraud were extensively litigated. The state court rendered its final decision based on the evidence at trial. Consequently, this element is satisfied.

***3. The Issues were Necessarily Decided in the State Court Action***

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Ventures, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). The issues present here were necessarily decided in the state court action. The state court could not have entered a judgment holding that Defendant is liable for fraud unless the state court decided all of the issues under § 523(a)(2)(A). This element is also satisfied.

***4. The State Court Judgment is Final and on the Merits***

Here, the State Court Judgment is final because it was affirmed on appeal and no further appeals are pending. The State Court Judgment was also on the merits, as evidenced by the Oral Ruling, which includes detailed findings about why Defendant is liable on the various causes of action asserted in state court. This element is satisfied.

***5. The Parties to this Proceeding are the Same as the Parties from the State Court Action***

The parties to this proceeding are identical to the parties from the state court action. Plaintiffs were the plaintiffs in the state court action, and defendant was one of the defendants in the state court action. As such, this element is also satisfied.

**B. 11 U.S.C. § 523(a)(4)**

***1. The Issues are Identical to the Issues from the State Court Action***

For purposes of § 523(a)(4), the fiduciary duty owed by a debtor must arise from an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

express, statutory or technical trust. The state court did not find that the fiduciary duties owed by Defendant arose from a trust at all. As such, the issues related to fraud or defalcation while acting in a fiduciary capacity are not identical.

However, the state court did find that Defendant embezzled funds. As noted above, to show embezzlement under § 523(a)(4), a plaintiff must show that: (1) the property was rightfully in the possession of the non-owner debtor; (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted; and (3) circumstances indicating fraud. *Littleton*, 942 F.2d at 555. For the same reasons as above, the state court found that Defendant's actions were fraudulent.

The state court also noted that the funds were rightfully in the possession of Defendant once Defendant took custody of the funds for the benefit of other entities and the projects Defendant represented the money would fund. Oral Ruling, 68:22-69:4. Finally, the state court extensively detailed Defendant's misappropriation of the funds to a use other than that for which the funds were entrusted. Oral Ruling, 69:12-70:7, 71:5-27.

Consequently, the issues about which the state court made extensive findings are identical to the issues regarding embezzlement in this adversary proceeding. As such, this element is met.

***2. The Issues were Actually Litigated in the State Court Action***

The "actually litigated" requirement addresses whether the issues were "properly raised, submitted for determination, and determined in that proceeding." *Happy Nails & Spa of Fashion Valley, L.P. v. Su*, 159 Cal. Rptr. 3d 503, 512 (Ct. App. 2013). Again, all parties appeared at trial and presented evidence, both oral and documentary. Based on the Oral Ruling, the issues related to Defendant's fraudulent misappropriation of funds were extensively litigated. The state court rendered its final decision based on the evidence at trial. Consequently, this element is satisfied.

***3. The Issues were Necessarily Decided in the State Court Action***

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Ventures, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). The issues present here were necessary to the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

State Court Judgment, because the state court could not have reached its conclusions without making the findings related to embezzlement. This element is also met.

**4. *The State Court Judgment is Final and on the Merits***

For the same reasons as above, this element is satisfied.

**5. *The Parties to this Proceeding are the Same as the Parties from the State Court Action***

For the same reasons as above, this element is satisfied.

**C. 11 U.S.C. § 523(a)(6)**

The Oral Ruling and the State Court Judgment are silent as to whether Defendant's conduct was willful or malicious. In the Motion, Plaintiffs assert that the Oral Ruling and the State Court Judgment establish a claim under § 523(a)(6) because the state court found that Defendant defrauded Plaintiffs and because the state court awarded punitive damages to Plaintiffs.

As to the first argument, a finding of fraud is insufficient for purposes of § 523(a)(6). Although a finding of fraud requires a finding that a defendant possessed intent to deceive, it does not require a finding that a defendant's conduct was willful, as that term is defined above, or malicious. As such, the findings regarding fraud are not identical to the intent elements required for § 523(a)(6).

As to the latter argument, the findings required to award punitive damages are not identical to the elements required to demonstrate a claim under § 523(a)(6). To award punitive damages, a state court must find clear and convincing evidence that a defendant is guilty of "oppression, fraud, or malice." Cal. Civ. Code § 3294(a) (emphasis added); *see also Plyam*, 530 B.R. at 464-65. "Fraud" for purposes of Cal. Civ. Code § 3294 is defined differently than the California cause of action or 11 U.S.C. § 523(a)(2)(A). *Compare* Cal. Civ. Code § 3294(c)(3) ("'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant *with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.*") (emphasis added); *with*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat Chapter 7**

*Weinberg*, 410 B.R. at 35 (holding that the intent element of a § 523(a)(2)(A) requires a finding that the defendant possessed intent to deceive).

Here, the state court did not make findings regarding fraud under Cal. Civ. Code § 3294. In fact, the state court did not express the basis for its punitive damages award at all. Pursuant to *Plyam*, while a punitive award damage based on intentional malice or fraud (as defined in Cal. Civ. Code § 3294) satisfies the "willfulness" requirement of § 523(a)(6), the other bases do not. *Plyam*, 530 B.R. at 464-65. Because the state court did not identify the basis for its punitive damages award, this Court cannot find that the issue of willfulness was decided by the state court. Consequently, Plaintiffs have not met their burden of proof under § 523(a)(6).

**IV. CONCLUSION**

The Court will enter judgment in favor of Plaintiffs on Plaintiffs' claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(4). The Court will not enter judgment on Plaintiffs' claim under 11 U.S.C. § 523(a)(6).

Plaintiffs must submit a proposed judgment within seven (7) days.

**Party Information**

**Debtor(s):**

Michael Anthony Rhomateo

Represented By  
Edmond Nassirzadeh

**Defendant(s):**

Michael Anthony Mabugat

Represented By  
Steven J Shapero

**Plaintiff(s):**

Jocelinda Investments, LLC

Represented By  
Alan W Forsley

La Bella Investments, LLC

Represented By  
Alan W Forsley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT...**      **Michael Anthony Rhomateo Mabugat**  
Comercio, LLC

Represented By  
Alan W Forsley

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**1:15-11148 Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Adv#: 1:15-01102 Jocelinda Investments, LLC et al v. Mabugat

**#16.00** Status conference re: complaint to determine dischargeability of debt

fr. 8/19/15; 9/16/15; 10/14/15; 11/18/15; 3/16/16; 9/14/16;  
1/18/2017; 4/19/17; 9/6/17; 12/6/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Michael Anthony Rhomateo

Represented By  
Edmond Nassirzadeh

**Defendant(s):**

Michael Anthony Mabugat

Pro Se

**Plaintiff(s):**

Jocelinda Investments, LLC

Represented By  
Alan W Forsley

La Bella Investments, LLC

Represented By  
Alan W Forsley

Comercio, LLC

Represented By  
Alan W Forsley

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**1:15-11148 Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Adv#: 1:15-01104 Gordon v. Mabugat

- #17.00** Motion by Plaintiff Craig Gordon for summary judgment or in the alternative summary adjudication of issues regarding plaintiff's complaint to determine dischargeability of debt pursuant to Bankruptcy Code Sections 523(a)(2)(A) & (a)(6)

Docket 42

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

***A. Plaintiff's and Defendant's Meeting***

On October 11, 2003, Craig Gordon ("Plaintiff") was injured in a vehicle accident and left in a coma. Statement of Uncontroverted Facts ("SUF") 2; Request for Judicial Notice ("RJN"), Exhibit 3. As a result of his injuries, Plaintiff could no longer practice dentistry and sold his dental practice to another dentist named John Chaves. SUF 4; RJN, Exhibit 3. Dr. Chaves introduced Plaintiff to Michael Anthony Rhomateo Mabugat ("Defendant"). SUF 5; RJN, Exhibit 3.

Plaintiff was not an experienced investor. SUF 6, RJN; Exhibit 3. Defendant told Plaintiff that Dr. Chaves had previously made substantial sums of money investing with Defendant, and that Defendant could do the same for Plaintiff. SUF 7; RJN, Exhibit 3. Defendant also told Plaintiff about Defendant's extravagant lifestyle and exotic cars. SUF 8; RJN, Exhibit 3.

Plaintiff later met Defendant at Defendant's office, at which time Defendant told Plaintiff that he had made millions in real estate, that he controlled and was the beneficiary of an \$80 million family trust, that he was a vice president at GE Capital working in its real estate acquisitions department and that his wife was a vice president at Sony. SUF 9-10; RJN, Exhibit 3. In reliance on Defendant's representations, Plaintiff transferred \$1,300,000 to Defendant's entities. SUF 11; RJN,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**  
Exhibit 3.

**Chapter 7**

***B. The Gulf Shores Project***

In the spring of 2005, Plaintiff transferred \$200,000 to Defendant's wholly owned limited liability company, Praetorian Development and Acquisitions, LLC ("Praetorian") to develop a multimillion dollar condominium project in Gulf Shores, Alabama (the "Gulf Shores Project"). SUF 12; RJN, Exhibit 3. Defendant told Plaintiff that "in a worst-case scenario," he would repay Plaintiff's investment with money from Defendant's \$80 million family trust. SUF 25; RJN, Exhibit 3. Defendant also told Plaintiff his funds would be used for the acquisition of property only, and "shall not be used for any other transaction or property owned or acquired by Praetorian." SUF 26, RJN, Exhibit 3. Plaintiff timely paid the \$200,000 under the parties' Gulf Shores Project agreement. SUF 28; RJN, Exhibit 3.

Unbeknownst to Plaintiff, the account which Defendant represented belonged to Praetorian was actually Defendant's personal account. SUF 30; RJN, Exhibit 3. Defendant did not use any of Plaintiff's investment for the Gulf Shores Project. SUF 31; RJN, Exhibit 3. Instead, Defendant diverted Plaintiff's investment to pay his personal expenses, including for expensive trips, jewelry, cars, homes and education for Defendant's daughters. SUF 31; RJN, Exhibit 3. Defendant also fabricated the existence of a family trust. SUF 32; RJN, Exhibit 3.

***C. The Vacant Land Project***

In late 2005, Plaintiff transferred another \$400,000 to Praetorian for an investment in 97 acres of vacant land (the "Vacant Land Project"). SUF 13, 33; RJN, Exhibit 3. Defendant presented to Plaintiff an agreement which stated that: (A) if Praetorian failed to purchase the vacant land, it would use Plaintiff's investment to fund another project entitled Fantasy Springs; and (B) the \$400,000 could only be used for the Vacant Land Project or finance Fantasy Springs. SUF 34; RJN, Exhibit 3. Plaintiff timely paid the \$400,000 under the parties' Vacant Land Project agreement. SUF 35; RJN, Exhibit 3.

Unbeknownst to Plaintiff, the account which Defendant represented belonged to Praetorian was actually Defendant's personal account. SUF 36; RJN, Exhibit 3.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... **Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Defendant diverted the \$400,000 to pay fees and costs for an unrelated development company in which Plaintiff had no interest. SUF 38; RJN, Exhibit 3. Defendant also used the funds to support his expensive lifestyle. SUF 38; RJN, Exhibit 3.

***D. The Delfino Project***

In mid-2007, Plaintiff transferred \$600,000 to Praetorian for the purchase and development of property in Palm Springs, known as the Delfino Resort (the "Delfino Project"). SUF 14; RJN Exhibit 3. Defendant told Plaintiff he would allow Plaintiff to invest in the Delfino Project as a favor to Plaintiff. SUF 40; RJN, Exhibit 3. Plaintiff timely paid \$600,000 to Praetorian under the parties' Delfino Project agreement. SUF 41; RJN, Exhibit 3.

The parties' agreement provided that the \$600,000 would be used only to acquire the Delfino Resort and "shall not be used for any other transaction or property owned or acquired by Praetorian." SUF 42; RJN, Exhibit 3. Instead, Plaintiff's \$600,000 investment was commingled with Defendant's personal funds and used to fund Defendant's lifestyle. SUF 43; RJN, Exhibit 3.

***E. The Avanterra Project***

In January 2008, Defendant told Plaintiff that he was looking for funds to finish a project because he was temporarily unable to access his \$80 million trust. SUF 45; RJN, Exhibit 3. As a result, Plaintiff transferred another \$100,000 to an account designated as belonging to Praetorian for a participation interest in Avanterra, a Delfino Resort (the "Avanterra Project"). SUF 15, 46; RJN, Exhibit 3. The Avanterra Project agreement stated that Plaintiff's investment was for the acquisition of Avanterra only and was not to be used for any other transaction or property. SUF 47; RJN, Exhibit 3.

Instead, Plaintiff's \$100,000 investment was commingled with Defendant's personal funds and to fund Defendant's lifestyle. SUF 48; RJN, Exhibit 3. As noted above, Defendant did not actually have a family trust worth \$80 million. SUF 49; RJN, Exhibit 3.

***F. The State Court Action***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat**

**Chapter 7**

On July 10, 2009, Plaintiff filed a state court complaint against Defendant and his entities, alleging fraud and other causes of action. SUF 16; Exhibit 2. On July 28, 2017, the state court entered a judgment with findings of fact and conclusions of law (the "State Court Judgment"). RJN, Exhibit 3. Aside from the findings of fact already outlined above, the state court made the following relevant findings and conclusions:

***1. The Gulf Shores Project***

The Gulf Shores Representation was a material inducement for [Plaintiff] to enter into the Gulf Shores Agreement. But for the Gulf Shores Representation, [Plaintiff] would not have made the Gulf Shores Investment.

...

The Court finds that: (a) [Defendant] intended for [Plaintiff] to rely on the Gulf Shores Representation; (b) [Defendant] knew the Gulf Shores Representation would be false when made, and (c) [Plaintiff] reasonably and justifiably relied on the Gulf Shores Representation to his detriment.

...

***2. The Vacant Land Project***

The Vacant Land Representation was a material inducement for [Plaintiff] to enter into the Vacant Land Agreement. But for the Vacant Land Representation, [Plaintiff] would not have made the Vacant Land Investment.

The Vacant Land Representation was false. ...

The Court finds that: (a) [Defendant] intended for [Plaintiff] to rely on the Vacant Land Representation; (b) [Defendant] knew the Vacant Land Representation would be false when made; and (c) [Plaintiff] reasonably and justifiably relied on Vacant Land Representation to his detriment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT...

**Michael Anthony Rhomateo Mabusat**

**Chapter 7**

...  
**3. *Miscellaneous***

The Court finds that (a) each of the above three incidents, (b) the Gniadek Introduction, (c) the Trust Fund Representation, (d) the false representations regarding the bank account to which [Defendant] told [Plaintiff] to wire monies, (e) the First and Second Fraudulent Diversions, and the (f) Third and Fourth Fraudulent Diversions described below were all part of [Defendant's] larger scheme to defraud [Plaintiff].

...  
**4. *The Delfino Project***

The Delfino Resort Representation was a material inducement for [Plaintiff] to enter into the Delfino Agreement. But for this representation, [Plaintiff] would not have made the Delfino Investment.

The Delfino Resort Representation was false when made....

The Court finds that: (a) [Defendant] intended for [Plaintiff] to rely on the Delfino Resort Representation; (b) [Defendant] knew the Delfino Resort Promise would be false when made, and (c) [Plaintiff] reasonably and justifiably relied on the Delfino Resort Representation to his detriment.

...  
**5. *The Avanterra Project***

[Plaintiff] would not have made the Avanterra Investment if he knew that the Avanterra Investment would not be used as promised, because he believed that if Avanterra failed, he could recover his... Avanterra Investment from the equity in the underlying real estate.

...  
The Court finds that: (a) [Defendant] intended for [Plaintiff] to rely on

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

the Avanterra Representation; (b) [Defendant] knew the Avanterra Representation to be false when made, and (c) [Plaintiff] reasonably and justifiably relied on the Avanterra Representation to his detriment.

...

**6. Conclusions**

From the foregoing, the Court determines that (a) the Bankruptcy Case does not prevent the entry of judgment in the instant case; (b) [Defendant] fabricated the existence of a family trust as part of his scheme to defraud [Plaintiff]; and (c) [Plaintiff's] investment in Praetorian is worthless.

...

[Defendant] engaged in a calculated scheme to gain [Plaintiff's] confidence and to defraud him. Because [Plaintiff's] disabling injuries and his inability to earn a living other than through the investment of the proceeds from the sale of his dental practice and his relative lack of investment experience, he was particularly vulnerable to [Defendant's] predations, which the court finds to have been willful and malicious in that [Defendant] acted intentionally, knowing and intending that [Plaintiff] would be harmed.

[Defendant] solicited \$1.3 million from [Plaintiff] under false pretenses, knowing that all of \$1.3 million of [Plaintiff's] investments would be diverted and commingled with [Defendant's] personal funds and spent on [Defendant's] personal expenses and that none of it would be invested as represented.

Having considered [Defendant's] representations, [Plaintiff's] vulnerability and lack of relevant experience, and the tactics with which [Defendant] manipulated [Plaintiff], the Court finds that [Plaintiff's] reliance on [Defendant's] false representations to have been both justifiable and reasonable.

Based on [Defendant's] intentional, willful, malicious conduct and fraudulent misrepresentations described above, the Court finds

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

[Plaintiff] to have suffered damages totaling \$3,405,544.54...

State Court Judgment, RJN, Exhibit 3.

***G. Defendant's Bankruptcy Case and the Adversary Proceeding***

On April 2, 2015, Defendant filed a voluntary chapter 7 petition. On July 2, 2015, Plaintiff filed a complaint against Defendant, requesting nondischargeability of the debt owed to him under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) (the "Complaint").

On November 14, 2017, Plaintiff filed a motion for summary judgment (the "Motion") [doc. 42], requesting that the Court enter judgment in favor of Plaintiff on Plaintiff's 11 U.S.C. §§ 523(a)(2)(A) and (a)(6) claims based on the State Court Judgment. Defendant did not timely oppose the Motion.

**II. LEGAL STANDARDS**

**A. General Motion for Summary Judgment Standard**

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

Here, there are no genuine issue as to any material fact and, as discussed below, Plaintiff is entitled to judgment as a matter of law pursuant to 11 U.S.C. §§ 523(a)(2) (A) and (a)(6).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Michael Anthony Rhomateo Mabugat  
B. Issue Preclusion**

**Chapter 7**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245).

**C. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT...

**Michael Anthony Rhomateo Mabusat**

**Chapter 7**

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

**D. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... Michael Anthony Rhomateo Mabugat

Chapter 7

**III. ANALYSIS**

As a preliminary matter, the State Court Judgment notes that Defendant did not appear at trial. Under California law, even default judgments are afforded preclusive effect as long as the defendant is aware of the litigation and the relevant issues were "actually litigated." *In re Sung Ho Cha*, 483 B.R. 547, 552 (B.A.P. 9th Cir. 2012). Here, the state court found that Defendant was properly noticed. State Court Judgment, p. 1. Moreover, Defendant was aware of the action because he filed an answer to the state court complaint. RJN, Exhibit 1. In addition, as discussed below, the relevant issues were "actually litigated" in state court. As such, Defendant's non-appearance at trial does not bar the application of issue preclusion.

**A. 11 U.S.C. § 523(a)(2)(A)**

Plaintiff has met his burden of proving that he is entitled to summary judgment on his 11 U.S.C. § 523(a)(2)(A) claim based on the State Court Judgment.

***1. The Issues are Identical to the Issues from the State Court Action***

Through the State Court Judgment, the state court held that Defendant was liable for fraud. The State Court Judgment was based on the same facts alleged in the Complaint.

With respect to § 523(a)(2)(A), "Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing to *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law.")).

Here, aside from finding Defendant liable for fraud, the state court also made specific findings as to each element of § 523(a)(2)(A). The state court found that Defendant made the following misrepresentations to Plaintiff:

- (A) Defendant represented to Plaintiff that Plaintiff's \$200,000 investment into the Gulf Shores Project would be placed into an account belonging to Praetorian, and that the funds would be used only for the acquisition of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Michael Anthony Rhomateo Mabugat**

**Chapter 7**

property and nothing else. Instead, Defendant placed the funds into his personal account and used the funds to pay personal expenses. State Court Judgment, pp. 3-4.

(B) Defendant represented to Plaintiff that Plaintiff's \$400,000 investment into the Vacant Land Project would be placed into an account belonging to Praetorian, and that the funds would be used only for the purchase of the vacant land or, in the alternative, a project known as Fantasy Springs. Instead, Defendant placed the funds into his personal account and used the funds to pay personal expenses. State Court Judgment, pp. 4-5.

(C) Defendant represented to Plaintiff that Plaintiff's \$600,000 investment into the Delfino Project would be placed into an account belonging to Praetorian, and that the funds would be used only for the acquisition of the Delfino Resort. Instead, Defendant placed the funds into his personal account and used the funds to pay personal expenses. State Court Judgment, pp. 6-7.

(D) Defendant represented to Plaintiff that Plaintiff's \$100,000 investment into the Avanterra Project would be placed into an account belonging to Praetorian, and that the funds would be used only for the acquisition of Avanterra. Instead, Defendant placed the funds into his personal account and used the funds to pay personal expenses. State Court Judgment, pp. 6-7.

(E) Defendant told Plaintiff that, if Plaintiff was not paid back his investment, he would be paid back from Defendant's family trust. Defendant fabricated the existence of a family trust as part of his scheme to defraud Plaintiff. State Court Judgment, pp. 3, 9.

The state court also explicitly found that Defendant knew his representations were false and that Defendant intended to deceive Plaintiff. State Court Judgment, pp. 4-5, 7-8. The state court also found that Plaintiff justifiably relied on Defendant's representations. State Court Judgment, pp. 4-5, 7-8, 9. Finally, the state court found that Plaintiff's damages were proximately caused by Plaintiff's reliance on Defendant's misrepresentations. State Court Judgment, p. 10. Based on the foregoing, Plaintiff has met his burden of proving that the issues are identical.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... Michael Anthony Rhomateo Mabugat

Chapter 7

***2. The Issues were Actually Litigated in the State Court Action***

The "actually litigated" requirement addresses whether the issues were "properly raised, submitted for determination, and determined in that proceeding." *Happy Nails & Spa of Fashion Valley, L.P. v. Su*, 159 Cal. Rptr. 3d 503, 512 (Ct. App. 2013). Based on the State Court Judgment, the state court heard and considered evidence regarding the relevant issues and made its determination in light of that evidence. As such, this element is satisfied.

***3. The Issues were Necessarily Decided in the State Court Action***

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Ventures, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). Here, the state court could not have entered a judgment holding that Defendant is liable for fraud unless the state court decided all of the issues under § 523(a)(2)(A). This element is also satisfied.

***4. The State Court Judgment is Final and on the Merits***

Here, the State Court Judgment is final because it was entered in July 2017 and there does not appear to be an appeal. The State Court Judgment was also on the merits, as evidenced by the findings of fact and conclusions of law. This element is satisfied.

***5. The Parties to this Proceeding are the Same as the Parties from the State Court Action***

The parties to this proceeding are identical to the parties from the state court action. Plaintiff was the plaintiff in the state court action, and defendant was one of the defendants in the state court action. As such, this element is also satisfied.

**B. 11 U.S.C. § 523(a)(6)**

Plaintiff has also met his burden of proving his claim under 11 U.S.C. § 523(a)(6) based on the State Court Judgment.

***1. The Issues are Identical to the Issues from the State Court Action***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 10, 2018

Hearing Room 301

2:30 PM

CONT... Michael Anthony Rhomateo Mabugat

Chapter 7

Through the State Court Judgment, the state court held that Defendant's conduct was "willful and malicious in that [Defendant] acted intentionally, knowing and intending that [Plaintiff] would be harmed." State Court Judgment, p. 9. The state court's findings were based on the same facts alleged in the Complaint. Because the state court specifically concluded that Defendant's conduct was both "willful" and "malicious," the issues are identical to § 523(a)(6), which requires a finding that a debtor's conduct is both "willful" and "malicious." This element is satisfied.

***2. The Issues were Actually Litigated in the State Court Action***

For the same reasons as above, this element is satisfied.

***3. The Issues were Necessarily Decided in the State Court Action***

The issues present here were necessarily decided in the state court action, as evidenced by the state court's explicit finding that Defendant's conduct was willful and malicious. As a result, this element is satisfied.

***4. The State Court Judgment is Final and on the Merits***

For the same reasons as above, this element is satisfied.

***5. The Parties to this Proceeding are the Same as the Parties from the State Court Action***

For the same reasons as above, this element is satisfied.

**IV. CONCLUSION**

The Court will enter judgment in favor of Plaintiff on Plaintiff's claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6).

Plaintiff must submit a proposed judgment within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Michael Anthony Rhomateo Mabusat**

**Chapter 7**

**Debtor(s):**

Michael Anthony Rhomateo

Represented By  
Edmond Nassirzadeh

**Defendant(s):**

Michael Anthony Rhomateo

Represented By  
Steven J Shapero

**Plaintiff(s):**

Craig Gordon

Represented By  
Alan W Forsley

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 10, 2018**

**Hearing Room 301**

2:30 PM

**1:15-11148 Michael Anthony Rhomateo Mabugat**

**Chapter 7**

Adv#: 1:15-01104 Gordon v. Mabugat

**#18.00** Status conference re complaint to determine dischargeability of debt

fr. 9/2/15(stip); 9/16/15; 10/14/15; 11/18/15; 3/16/16; 7/20/16; 11/16/16; 3/8/17; 5/24/17; 9/13/17; 12/6/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Michael Anthony Rhomateo

Represented By  
Edmond Nassirzadeh

**Defendant(s):**

Michael Anthony Rhomateo

Pro Se

**Plaintiff(s):**

Craig Gordon

Represented By  
Alan W Forsley

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#1.00** Application for payment of interim fees and/or expenses  
for AOE Law & Associates, Debtor's Attorney  
Period: 5/12/2017 to 12/18/2017

Docket 81

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J), the applicant did not include a declaration from the debtor indicating that the debtor has reviewed the fee application and has no objection to it. In addition, the applicant has not provided notice to other professionals of the estate in accordance with LBR 2016-1(a)(2)(A), which requires 45 days notice to other professionals of the date and time of the hearing on the applicant's fee application.

Further, although the applicant requests a total of \$16,723.26 in attorneys' fees and costs, the applicant has not included the amount of cash on hand in the estate. According to the debtor's most recent monthly operating report, for November 2017, the debtor had an ending balance of \$30.46 in his general account and \$12,011.30 in his rental property account. How does the debtor intend to pay the \$16,723.26 in attorneys' fees and costs?

**Party Information**

**Debtor(s):**

Ikechukwu Mgbeke

Represented By

Anthony Obehi Egbase

Clarissa D Cu

Crystle J Lindsey

W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#2.00** Status conference re chapter 11 case

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017

Docket 1

**Tentative Ruling:**

Having reviewed the *Chapter 11 Status Report* [doc. 218], the Court will continue the status conference to **January 25, 2018 at 1:00 p.m.**, to coincide with the hearing on the confirmation of debtor's third amended chapter 11 plan. No status report is required before the continued status conference.

Appearances on January 11, 2018 are excused.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#3.00** Disclosure statement hearing re: debtor's plan of reorganization  
fr. 10/19/17

Docket 134

**\*\*\* VACATED \*\*\* REASON: Vacated at status conference on 12/21/17;  
withdrawn on 1/4/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13053 Richard James Quiroz**

**Chapter 7**

**#4.00** U.S. Trustee's motion to amend order dismissing case to include a one-year bar to re-filing pursuant to 11 U.S.C.

Docket 15

**Tentative Ruling:**

The Court will continue this hearing to **2:00 p.m. on January 18, 2018**, to be heard with the debtor's motion to vacate the Court's dismissal order [doc. 19]. The debtor must personally appear at the continued hearing.

Appearances are excused on January 11, 2018.

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

**Debtor(s):**

Richard James Quiroz	Pro Se
----------------------	--------

**Trustee(s):**

Amy L Goldman (TR)	Pro Se
--------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**1:11-10426 Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

**#5.00** Motion of Joseph M. Fahs for order authorizing plan administrator to distribute to him forthwith all sums withheld from prior plan distributions on account of his allowed claim

Docket 2979

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On October 27, 2009, petitioning creditors Joseph Fahs, Steven Chapnick and Elizabeth Tagle filed an involuntary chapter 11 petition against Georges Marciano ("Debtor"). On December 28, 2010, the Court entered an Order for Relief [doc. 161]. Prepetition, Alain Bonavida had represented Mr. Fahs in a state court action against Debtor. Declaration of Alain V. Bonavida ("Bonavida Declaration") [doc. 2983], ¶ 2.

The Court set a claims bar date of May 15, 2012. To date, Mr. Bonavida has not filed a claim against the estate, nor has Debtor indicated that Mr. Bonavida has a claim against the estate.

On May 16, 2013, David K. Gottlieb, as the chapter 11 trustee (the "Trustee"), filed a motion for an order approving a settlement agreement (the "Settlement Agreement") [docs. 2073, 2123] with Debtor, certain entities under Debtor's control and various third parties, including Mr. Fahs. On May 30, 2013, the Court entered an order approving the Settlement Agreement [doc. 2122]. Mr. Bonavida was not a party to the Settlement Agreement. In relevant part, the Settlement Agreement provided for a \$10 million distribution from the estate to Mr. Fahs. Settlement Agreement, p. 47.

On May 23, 2013, Alain Bonavida, Mr. Fahs' prior state court counsel, filed a notice of an attorneys' lien in this case (the "Notice of Lien") [doc. 2091].

On October 29, 2013, the Trustee filed a fourth amended chapter 11 plan of liquidation (the "Plan") [doc. 2413]. The Trustee had previously filed the related

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Georges Marciano and Beverly Hills Antiques, Inc. Chapter 11**

disclosure statement (the "Disclosure Statement") [doc. 2007]. On December 2, 2013, the Court entered an order confirming the Plan [doc. 2471]. Neither the Plan nor the Disclosure Statement provides for any distribution to Mr. Bonavida. The Plan and the Disclosure Statement also do not refer to Mr. Bonavida as a holder of a claim against the estate.

After confirmation of the Plan, David K. Gottlieb, as the plan administrator (the "Administrator"), routinely filed post-confirmation status reports (collectively, the "Status Reports") [docs.2749, 2855, 2915, 2944, 2966, 2970, 2976]. The Administrator noted in the Status Reports that he was withholding 40% of the funds owed to Mr. Fahs based on a dispute between Mr. Bonavida and Mr. Fahs. Specifically, Mr. Bonavida asserted a lien against the funds owed to Mr. Fahs based on an alleged prepetition fee agreement between the parties. In the Status Report, the Administrator repeatedly noted that he was attempting to obtain the parties' cooperation in interpleading the disputed funds to state court, where the parties were litigating their dispute. Apparently, the parties did not reach an agreement [doc. 2976].

On July 3, 2014, Mr. Bonavida filed a complaint against Mr. Fahs in state court. Declaration of David C. Wheeler ("Wheeler Declaration") [doc. 2979], ¶ 2. Mr. Bonavida dismissed this action before the case went to trial. Wheeler Declaration, ¶ 3. On April 21, 2017, Mr. Bonavida filed another complaint against Mr. Fahs. Wheeler Declaration, ¶ 4. On November 29, 2017, the court entered a judgment in this action (the "State Court Judgment"), finding that Mr. Bonavida "shall recover nothing" from Mr. Fahs. Wheeler Declaration, ¶ 5, Exhibit 2. Mr. Bonavida appealed the State Court Judgment. Bonavida Declaration, ¶ 17.

On December 13, 2017, Mr. Fahs filed a motion requesting disbursement of the remaining funds held by the Administrator (the "Motion") [doc. 2979]. On December 28, 2017, Mr. Bonavida filed an opposition to the Motion (the "Opposition") [doc. 2983], requesting an order keeping the funds under the control of the Administrator until the appeal between the parties is resolved. Mr. Bonavida asserts that the State Court Judgment is not final because it is on appeal, and, as a result, the Court cannot rely on the State Court Judgment to distribute the funds. Mr. Bonavida also states that Mr. Fahs cannot avoid his lien through the Motion and requests that the funds remain in the reserve account until the appeal is resolved under equitable grounds pursuant to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 11, 2018

Hearing Room 301

---

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.** Chapter 11

11 U.S.C. § 105(a). On January 3, 2018, the Administrator filed a response to the Motion [doc. 2985], noting that the distribution to Mr. Fahs is the final matter to be resolved prior to closing this bankruptcy case. On January 4, 2018, Mr. Fahs filed a reply to the Opposition (the "Reply") [doc. 2986].

## II. ANALYSIS

### *A. This Court Does Not Have Subject Matter Jurisdiction Over the Parties' Underlying Dispute*

28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

#### i. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

#### ii. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . . ." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 11, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.** Chapter 11

automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11 . . . ." 28 U.S.C. § 157(b)(1); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

iii. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the 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 (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pegasus Gold Corp.*, 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

A bankruptcy court's "related to" jurisdiction "cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 1499, 131 L.Ed. 2d 403 (1995). "[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at \*10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Regarding third party disputes, "[c]ases that find 'related to' jurisdiction in the context of third party disputes do so when the subject of the claim 'is property of the estate, or because the dispute over the asset would have an effect on the estate.'" *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 697 (Bankr. W.D. Tex. 2011) (quoting *Matter of Zale Corp.*, 62 F.3d 746, 753 (5th Cir. 1995)); see also *In re Dreier, LLP*, 429 B.R. 112,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 11, 2018

Hearing Room 301

---

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

Chapter 11

131 (Bankr. S.D.N.Y. 2010). "Shared facts between a third-party conflict and a debtor-creditor conflict are said to be insufficient to confer jurisdiction; additionally, judicial economy alone likewise cannot confer jurisdiction." *Id.*

Here, under any of the types of jurisdiction outlined above, this Court does not have jurisdiction over the disputes between Mr. Fahs and Mr. Bonavida, two non-debtor parties. Mr. Bonavida is not a creditor of this estate. As a result, the Plan did not provide for a distribution to Mr. Bonavida. Rather, if he is successful on appeal, Mr. Bonavida will be a creditor of *Mr. Fahs*. Whether or not Mr. Bonavida eventually has a claim against Mr. Fahs or proves the validity of a lien against Mr. Fahs' recovery from this estate will not have any effect on the administration of this estate pursuant to the Plan.

The fact that Mr. Bonavida filed the Notice of Lien in this case does not create subject matter jurisdiction where subject matter jurisdiction does not exist. To the extent Mr. Bonavida has a valid lien, which this Court cannot decide for lack of jurisdiction, the lien is against funds designated for Mr. Fahs. The alleged lien does not have any effect on property of the estate, nor does it impact distribution under the Plan. The Court notes that the Motion is not requesting avoidance of any lien asserted by Mr. Bonavida. Again, this Court does not have jurisdiction over the validity of liens in favor of Mr. Bonavida, whether through a motion or an adversary proceeding. Mr. Bonavida may argue for the validity of his lien against the funds in state court.

In addition, Mr. Bonavida is not a party to the Settlement Agreement. The Settlement Agreement provides for distribution of the full \$10 million to *Mr. Fahs*. The Settlement Agreement does not include any provision creating an obligation owed to Mr. Bonavida. Consequently, the dispute between Mr. Fahs and Mr. Bonavida also does not have any effect on the Settlement Agreement. Pursuant to both the Plan and the Settlement Agreement, the estate's obligation towards Mr. Fahs is fulfilled upon distribution of the full amount of Mr. Fahs' allowed claim against the estate to Mr. Fahs.

In light of the fact that the parties' dispute does not have any impact on the administration of the estate under the Plan or the Settlement Agreement, this Court does not have subject matter jurisdiction to make any determinations regarding the validity or scope of Mr. Bonavida's alleged claim against Mr. Fahs or Mr. Bonavida's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 11, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**  
asserted lien against Mr. Fahs' property.

Chapter 11

***B. There is No Legal Basis for Ordering the Administrator to Withhold the Funds where the Court Does Not Have Subject Matter Jurisdiction over the Underlying Dispute***

Given that this Court does not have subject matter jurisdiction over the parties' underlying dispute, Mr. Bonavida has not provided any authority that stands for the proposition that this Court can order a plan administrator to act as an escrow account for two non-debtor entities. Both the Plan and the Settlement Agreement provide for distribution to Mr. Fahs, who was a party to the Settlement Agreement and is a creditor of this estate. Under both the Plan and the Settlement Agreement, the Administrator must distribute the total amount owed to Mr. Fahs to Mr. Fahs. As noted above, nothing in the Plan or the Settlement Agreement provides that the Administrator is to withhold funds from Mr. Fahs based on a dispute between Mr. Fahs and one of his creditors.

The parties discuss the finality of the State Court Judgment. However, whether or not the State Court Judgment is final is irrelevant to the matter at hand. Neither the Plan nor the Settlement Agreement included any provision regarding withholding the disputed funds from Mr. Fahs until the litigation between Mr. Fahs and Mr. Bonavida was resolved. It appears that the Administrator and the parties kept the funds in a reserve account under the control of the Administrator for the sake of convenience while the state court action was pending. Nevertheless, the record before the Court does not establish that the Administrator was legally bound to keep the funds in a reserve account under his control *at all*, let alone until the litigation between Mr. Fahs and Mr. Bonavida is final. In fact, as noted in the Status Reports, the Administrator apparently attempted several times to move the funds to an account under the control of the state court.

The Court also cannot order the funds withheld pursuant to 11 U.S.C. § 105(a). The Court's inherent powers under 11 U.S.C. § 105(a) cannot stretch beyond what is allowed under the Bankruptcy Code, nor can 11 U.S.C. § 105(a) be read to confer subject matter jurisdiction onto bankruptcy courts where subject matter jurisdiction does not otherwise exist. *See Law v. Siegel*, 134 S.Ct. 1188, 188 L.Ed.2d 146 (2014). The Bankruptcy Code expressly provides that a chapter 11 plan is binding, 11 U.S.C.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Georges Marciano and Beverly Hills Antiques, Inc. Chapter 11**

§ 1141, and that the entity tasked with carrying out the plan (here, the Administrator) "shall carry out the plan." 11 U.S.C. § 1142. The Court cannot rely on 11 U.S.C. § 105(a) to contravene these statutes or the Plan.

There is no legal basis for compelling the Administrator to hold the funds until these non-debtor parties' appeal is resolved. According to the Administrator, the distribution to Mr. Fahs is the final matter to be resolved before closing this case. As such, the Court will order the distribution of the funds to Mr. Fahs.

**III. CONCLUSION**

The Court will grant the Motion and order the Administrator to distribute the remaining funds to Mr. Fahs.

Mr. Fahs must submit a proposed order within seven (7) days.

**Party Information**

**Debtor(s):**

Georges Marciano

Represented By  
Michael E Reznick  
Michael C Heinrichs  
Jeremy V Richards  
Jonathan J Kim  
Robert Mockler  
Bernard R Given

Beverly Hills Antiques, Inc.

Represented By  
Jeremy V Richards  
Jeffrey L Kandel  
Jonathan J Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT...**

**Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter  
Peter A Davidson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 6/8/17, 10/5/17; 10/19/17 (stip); 11/16/17(stip); 12/14/17

Docket 1

**Tentative Ruling:**

Assuming the debtors timely file their proposed chapter 11 plan and related proposed disclosure statement, the debtors should be prepared to discuss setting a date for the hearing on the adequacy of their proposed disclosure statement.

**Party Information**

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#7.00** Debtor's motion for order authorizing use of cash collateral  
as of the petition date

Docket 38

**Tentative Ruling:**

The debtor did not properly serve the following entities at the address listed on the California Secretary of State's website or at the address provided by the entity's proof of claim: (A) Select Portfolio Servicing, Inc.; (B) Citimortgage, Inc.; (C) Wells Fargo Home Mortgage; and (D) Seterus, Inc.

The Court will continue this hearing to **2:00 p.m. on February 8, 2018**. No later than **January 18, 2018**, the debtor must file proof of properly serving the entities listed above.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#8.00 Debtors' motion for order authorizing use of cash collateral**

Docket 25

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

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

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 11, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#9.00** Status conference re chapter 11 case

fr. 12/21/17

Docket 1

**Tentative Ruling:**

The debtors have not filed their November 2017 monthly operating report.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **May 1, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on May 24, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before a continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor (s) in possession to file a proposed plan and related disclosure statement.

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

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-11523 Shamel Sanani and Farideh Sanani**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and Wells Fargo Bank (NA)  
(4970 Kester Ave., #11; Sherman Oaks, CA 91403)

Docket 85

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

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-11523 Shamel Sanani and Farideh Sanani**

**Chapter 7**

**#2.00** Reaffirmation agreement between debtor and Wells Fargo Bank N.A.  
(3935 Prado Del Maiz, Calabasas, CA 91302-3633)

Docket 86

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12125 Misak Saakyan**

**Chapter 7**

**#3.00** Reaffirmation agreement between debtor and PACCAR Financial Corp.  
fr. 12/19/17

Docket 19

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

**Debtor(s):**

Misak Saakyan

Represented By  
Elena Steers

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12179 Juan L. Mendoza and Elizabeth Iniquez**

**Chapter 7**

**#4.00** Reaffirmation agreement between debtor and American  
Honda Finance Corporation

fr. 11/21/17

Docket 12

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

**Debtor(s):**

Juan L. Mendoza

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Elizabeth Iniquez

Represented By  
R Grace Rodriguez

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12231 Barry Christian Coe and Maricarmen R Coe**

**Chapter 7**

**#5.00** Reaffirmation agreement between debtor and BMW Financial Services NA, LLC

fr. 12/19/17

Docket 13

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

**Debtor(s):**

Barry Christian Coe

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Maricarmen R Coe

Represented By  
Allan D Sarver

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12497 Harry Thomas Green**

**Chapter 7**

**#6.00** Reaffirmation agreement between debtor and Nationstar Mortgage LLC  
d/b/a/ Mr. Cooper

fr. 12/19/17

Docket 13

**Party Information**

**Debtor(s):**

Harry Thomas Green

Represented By  
Stephen M Sanders

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12678 Laura Marcela Vargas Esquivel**

**Chapter 7**

**#7.00** Reaffirmation agreement between debtor and Ally Bank

Docket 11

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

**Debtor(s):**

Laura Marcela Vargas Esquivel Pro Se

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, January 16, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12737 Victoria Susana Cattan**

**Chapter 7**

**#8.00** Reaffirmation agreement between debtor and Cab West, LLC

Docket 11

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

**Debtor(s):**

Victoria Susana Cattan

Represented By  
Daniel King

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 17, 2018

Hearing Room 301

9:30 AM

1:13-16424 Mark Pinsker and Melanie Pinsker

Chapter 13

#1.00 Motion for relief from stay [RP]

CITIBANK, N.A.  
VS  
DEBTOR

fr. 7/12/17; 10/18/17(stip); 11/22/17(stip); 12/13/17

Docket 54

\*\*\* VACATED \*\*\* REASON: Voluntary Dismissal filed 12/22/17

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mark Pinsker

Represented By  
David S Hagen

**Joint Debtor(s):**

Melanie Pinsker

Represented By  
David S Hagen

**Movant(s):**

Citibank, N.A.

Represented By  
William F McDonald III  
Theron S Covey

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 17, 2018

Hearing Room 301

9:30 AM

1:17-13428 Michael Rodriguez

Chapter 13

#1.10 Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION  
VS  
DEBTOR

fr. 1/10/18

Docket 18

**Tentative Ruling:**

The parties should be prepared to discuss a date and time for an evidentiary hearing on this matter.

**Tentative ruling from 1/10/17**

Based on the movant's evidence, unless timely controverted by the debtor, the Court will grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2), and annul the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

If that relief is granted, movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) will be waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Michael Rodriguez

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Michael Rodriguez**

James Geoffrey Beirne

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13714 Mitchell S. Cohen**

**Chapter 13**

**#2.00** Declaration re: default under adequate protection order

fr. 12/20/17

Docket 97

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 1/10/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mitchell S. Cohen

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13275 Oscar Torres**

**Chapter 13**

**#3.00** Motion for relief from stay [UD]

CH REALTY VI/MF WOODLAND HILLS WARNER, LLC  
VS  
DEBTOR

**Case dismissed 12/27/2017**

Docket 10

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
01/02/2018**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oscar Torres

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:15-12605 Aurora Elizabeth Abraham**

**Chapter 13**

**#4.00 Motion for relief from stay [RP]**

U.S. BANK, N.A.  
VS  
DEBTOR

Docket 49

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Aurora Elizabeth Abraham

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:15-14192 Maria Trinidad De Anda**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

REVERSE MORTGAGE SOLUTIONS, INC.  
VS  
DEBTOR

Docket 25

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Maria Trinidad De Anda

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10564 Benjamin Ledesma**

**Chapter 13**

**#6.00** Motion for relief from stay [RP]

BANC OF CALIFORNIA, N.A.  
VS  
DEBTOR

Docket 21

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Benjamin Ledesma

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12844 Jehoshua Coreas**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

**Case dismissed 11/22/2017**

Docket 15

**Tentative Ruling:**

This case was dismissed on November 22, 2017. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jehoshua Coreas**

**Chapter 13**

**Debtor(s):**

Jehoshua Coreas

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13039 Benjawan Rachapaetayakom**

**Chapter 13**

**#8.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 13

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant is the beneficiary of a trust deed encumbering the real property at issue, located at 14339 Osborne St., Panorama City, CA 91402-2524 (the "Property"). Movant asserts that it holds a secured claim in the approximate amount of \$453,064. Benjawan Rachapaetayakom (the "Debtor") and his spouse, Yuthana Singruang, are the identified borrowers on movant's trust deed and promissory note.

On July 8, 2009, the Debtor and the Debtor's spouse executed a loan modification agreement with movant's predecessor-in-interest. Attached to the motion is a payment history which indicates that the Debtor had not made any prepetition deed of trust payments since December 2015.

On November 15, 2016, the Debtor's spouse filed case no. 1:16-bk-13271-VK. The Debtor's spouse listed the Property as her residence address. On March 15, 2017, after a chapter 13 plan confirmation hearing, this case of the Debtor's spouse was dismissed.

On May 11, 2017, the Debtor's spouse filed case no. 1:17-bk-11247-MB. The Debtor's spouse again listed the Property as her residence address. On June 26, 2017, this case of the Debtor's spouse was dismissed for failure to make required plan payments.

On September 5, 2017, the Debtor filed case no. 1:17-bk-12368-MB. The Debtor listed the Property as his residence address. On November 8, 2017, this prior case of the Debtor was dismissed for failure to appear at the 341(a) meeting of creditors



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Benjawan Rachapaetayakom**  
and/or to make required plan payments.

**Chapter 13**

On November 14, 2017, the Debtor filed the pending case and listed the Property on the schedules [doc. 8]. In his schedule I, the Debtor describes monthly income in the amount of \$3,550, of which \$1,800 is identified as "help from family." In his schedule J, the Debtor set forth monthly expenses in the amount of \$3,489, leaving net monthly income of \$61.00.

Debtor has filed an opposition [doc. 15] to the motion. Attached to the opposition is a copy of a cashier's check, dated January 2, 2018, in the amount of \$2,728.53. The Debtor allegedly sent this check to movant by certified mail. Because the Debtor did not include a declaration signed under penalty of perjury with his opposition, there is no evidence that the Debtor actually sent this check to movant, or when he did so.

On November 28, 2017, the Debtor filed a chapter 13 plan (the "Plan") [doc. 9]. The Plan is missing required pages and does not include any discussion of the treatment of movant's secured claim. On January 10, 2018, movant filed an objection to the Plan [doc. 16]. In the objection, movant argues that the Debtor's monthly net income of \$61.00 is insufficient to fund a chapter 13 plan that will cure the prepetition arrearages of \$63,089.15 within a 5-year plan term.

11 U.S.C. § 362(d)(4) provides:

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 conditioning such stay—

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Benjawan Rachapaetayakom**  
court approval; or

**Chapter 13**

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

The Court concludes that the Debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors. The Debtor filed his pending case on November 14, 2017. In his opposition, the Debtor did not address the arrearages owing to movant since December 2015. Since the petition date, two deed of trust payments have come due. If the Debtor has made the single postpetition payment to movant noted in his opposition, the Debtor still would be delinquent on his postpetition deed of trust payments.

The multiple bankruptcy filings by the Debtor and the Debtor's spouse, the dismissal of three prior bankruptcy cases affecting the Property, the filing of the incomplete Plan, and the Debtor's apparent inability to fund a feasible chapter 13 plan justify relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and the provision of *in rem* relief pursuant to 11 U.S.C. § 362(d)(4).

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Benjawan Rachapaetayakom**

**Chapter 13**

Movant must submit an order within seven (7) days.

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

**Debtor(s):**

Benjawan Rachapaetayakom	Pro Se
--------------------------	--------

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13142 Amir Elosseini**

**Chapter 11**

**#9.00** Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 11

**\*\*\* VACATED \*\*\* REASON: Continued to 2/14/18 at 9:30 a.m. per order**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amir Elosseini

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 17, 2018

Hearing Room 301

1:30 PM

1:11-18591 NOOR NORRIS

Chapter 7

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#10.00** Pretrial conference re: first amended complaint to revoke discharges of debtors Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17(stip)

Docket 1

\*\*\* VACATED \*\*\* REASON: Set for 1/24/18 pursuant to scheduling order [doc. 21].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**NOOR NORRIS**

Brad S Sures

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

Adv#: 1:17-01100 Betancur v. Kandy Kiss of California, Inc. et al

**#11.00** Motion for remand pursuant to 28 U.S.C. sec 1452(B),  
28 U.S.C. sec 1334(C)(1)and (2)

**STIP filed 01/04/18**

Docket 8

**\*\*\* VACATED \*\*\* REASON: Order entered 1/5/18 cont matter to 2/14/18  
@1:30pm.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Defendant(s):**

Kandy Kiss of California, Inc.

Pro Se

**Plaintiff(s):**

Mauricio Betancur

Represented By  
Cynthia M Cohen

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

Adv#: 1:17-01100 Betancur v. Kandy Kiss of California, Inc. et al

**#12.00** Status conference re: notice of removal

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 1/5/18 cont matter to 2/14/18  
@ 1:30pm.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Defendant(s):**

Kandy Kiss of California, Inc.

Pro Se

**Plaintiff(s):**

Mauricio Betancur

Represented By  
Cynthia M Cohen

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:16-01080 Olde Wolbers et al v. Cazares

**#13.00** Trial re: complaint objecting to discharge  
[FOR RULING]

fr. 7/20/16; 9/14/16; 10/5/16; 10/19/16; 11/23/16; 12/21/16;  
6/14/2017; 6/21/17; 11/28/17; 11/29/17

Docket 1

**Tentative Ruling:**

The Court will continue this matter to **January 31, 2018 at 2:30 p.m.**

Appearances on January 17, 2018 should not be made.

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

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Ian Landsberg

**Defendant(s):**

Dean Albert Maury Cazares

Pro Se

**Plaintiff(s):**

Christian Olde Wolbers

Represented By  
Larry Castruita

Raymond Herrera

Represented By  
Larry Castruita

**Trustee(s):**

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11503 RALPH L FERGUSON**

**Chapter 7**

Adv#: 1:17-01086 Quinones v. FERGUSON

**#14.00** Motion for dismissal of plaintiff's complaint to determine debt to be non-dischargeable for failure to state a claim for which relief can be granted

Docket 8

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On June 6, 2017, Ralph L. Ferguson ("Defendant") filed a voluntary chapter 7 petition. On June 8, 2017, the Court sent notice of the bankruptcy case and the deadline to object to Debtor's discharge or request nondischargeability of a debt (the "Notice") [Bankruptcy Docket, doc. 7]. The Notice specified that the applicable deadline by which to file an objection to discharge or a request for nondischargeability of a debt (collectively, the "Discharge Deadlines") was September 8, 2017. The Notice was served on Theresa Quinones ("Plaintiff").

On August 28, 2017, the chapter 7 trustee (the "Trustee"), the U.S. Trustee and Debtor entered into a stipulation to extend the deadline by which to file an objection to discharge "for the Trustee and the Office of the United States Trustee" and "only to commence actions pursuant to 11 U.S.C. § 727" (the "Stipulation") [Bankruptcy Docket, doc. 23]. On the same day, the Court entered an order approving the Stipulation (the "Extension Order") [doc. 26]. In the Extension Order, the Court explicitly stated that the Court was extending the deadline "for the Trustee and the Office of the United States Trustee" and that the extension was for filing "objections to discharge." After the Court extended the deadline for the Trustee and the U.S. Trustee, Debtor's bankruptcy docket noted the following: "Deadline for *objecting to discharge*: 10/27/2017." (emphasis added).

On October 11, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to her pursuant to 11 U.S.C. §§ 523

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 17, 2018

Hearing Room 301

---

2:30 PM

CONT... RALPH L FERGUSON

Chapter 7

(a)(2)(A) and (a)(6). The Complaint was filed over one month after the deadline in the Notice.

On November 14, 2017, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 8], on the basis that the Complaint was not timely filed. On January 3, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 13], on the basis that Debtor's bankruptcy case docket reflected a deadline of October 27, 2017. On the same day, Plaintiff also filed a motion to extend the deadline by which Plaintiff may file a nondischargeability complaint (the "Motion to Extend") [doc. 11].

## II. ANALYSIS

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4007(c)—

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.

According to FRBP 9006(b)(3), "[t]he court may enlarge the time for taking action under Rules ... 4004(a), 4007(c)... only to the extent and under the conditions stated in those rules." "This requirement distinguishes FRBP 4007(c)'s deadline from most others set by the bankruptcy rules, which bankruptcy courts may extend at any time upon a showing of good cause or excusable neglect." *Anwar v. Johnson*, 720 F.3d 1183, 1187 (9th Cir. 2013) (citing FRBP 9006(b)(1)).

"Consistent with the plain language of FRBP 4007(c) and 9006(b)(3), we have repeatedly held that the sixty-day time limit for filing nondischargeability complaints under 11 U.S.C. § 523(c) is 'strict' and, without qualification, 'cannot be extended unless a motion is made before the 60-day limit expires.'" *Id.* (quoting *In re Kennerley*, 995 F.2d 145, 146 (9th Cir. 1993)). Bankruptcy courts "lack[] equitable power to grant [plaintiffs] relief from... untimely filings." *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... RALPH L FERGUSON**

**Chapter 7**

"On occasion, we have suggested that 'unique or extraordinary circumstances' might allow an untimely § 523(a)(2) complaint to stand." *Willms v. Sanderson*, 723 F.3d 1094, 1103 (9th Cir. 2013) (citing *Kennerley*, 995 F.2d at 147); *see also Anwar*, 720 F.3d at 1188 ("[A]bsent unique and exceptional circumstances ..., we do not inquire into the reason a party failed to file on time in assessing whether she is entitled to an equitable exception from [Bankruptcy Rule] 4007(c)'s filing deadline...."). The Court of Appeals has not conclusively decided whether "unique or extraordinary circumstances" could serve to extend the deadline found in FRBP 4007(c); rather, in *Anwar*, the Court of Appeals stated that such circumstances *might* serve to extend the deadline, but did not reach a holding on the issue:

We acknowledge that the U.S. Supreme Court has not expressly addressed whether FRBP 4007(c)'s filing deadline admits of any equitable exceptions and that lower courts are divided on the issue. *See Kontrick v. Ryan*, 540 U.S. 443, 457 & nn. 11–12, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) (declining to decide question and noting circuit split). We need not, and do not, reach the question of whether external forces that prevented any filings—such as emergency situations, the loss of the court's own electronic filing capacity, or the court's affirmative misleading of a party—would warrant such an exception. *See, e.g., In re Kennerley*, 995 F.2d at 147–48; *see also Ticknor v. Choice Hotels Intern., Inc.*, 275 F.3d 1164, 1165 (9th Cir.2002).

*Anwar*, 720 F.3d at 1188 n.6. The *Anwar* court relied on *Kennerley* to propose certain situations that *might* serve to extend the FRBP 4007(c) deadline. *Id.* ("emergency situations, the loss of the court's own electronic filing capacity, or the court's affirmative misleading of a party"). In *Willms*, also decided by the Ninth Circuit Court of Appeals in 2013, the Court of Appeals reiterated this notion: "But 'the validity of the doctrine remains doubtful' and 'would appear to be limited to situations where a court *explicitly misleads* a party.'" *Willms*, 723 F.3d at 1103 (quoting *Kennerley*, 995 F.2d at 147–48) (emphasis in *Kennerley*); *see, e.g. In re Anwiler*, 958 F.2d 925, 929 (9th Cir. 1992) (permitting an untimely § 523 complaint because the bankruptcy court sent creditors a notice containing the incorrect deadline).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... RALPH L FERGUSON**

**Chapter 7**

In light of the authorities above, it is unclear whether this court has the power to extend the FRBP 4007(c) deadline even if Plaintiff presented a "unique or extraordinary circumstance" to the Court. However, even if the Court has such power, Plaintiff has not demonstrated the type of "unique or extraordinary circumstance" that would justify an extension of the Discharge Deadlines.

Here, the Notice sent to Plaintiff reflected the correct deadline by which Plaintiff had to file a nondischargeability complaint. Plaintiff did not timely file the Complaint, nor did Plaintiff file a request for an extension of the Discharge Deadlines prior to the expiration of the Discharge Deadlines.

Plaintiff asserts the deadline should be extended because the Court's docket reflected a deadline of October 27, 2017. However, the date on the docket on which Plaintiff relied was the date by which to file *objections to discharge*, not the date by which to file nondischargeability complaints. The Notice, which was served on Plaintiff, accurately reflected the deadline by which Plaintiff had to file an action requesting nondischargeability of the debt owed to her.

Moreover, the extended deadline on the Court's docket referred to an extension granted only to the Trustee and the U.S. Trustee, not to all creditors. That the Court extended the deadline only for the Trustee and the U.S. Trustee is evident from the language on the docket, as well as the language within the Stipulation and the Extension Order. In light of these facts, Plaintiff has not shown that the Court affirmatively or explicitly misled Plaintiff, or that Plaintiff faced the type of "unique or extraordinary circumstance" that might warrant the extension of the FRBP 4007(c) deadline. Consequently, the Court must dismiss the Complaint pursuant to the authorities above.

### **III. CONCLUSION**

The Court will grant the Motion and dismiss the Complaint with prejudice.

Defendant must submit a proposed order within seven (7) days.

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

**Debtor(s):**

RALPH L FERGUSON

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... RALPH L FERGUSON**

**Chapter 7**

Suresh C Pathak

**Defendant(s):**

RALPH L FERGUSON

Represented By  
Suresh C Pathak

**Plaintiff(s):**

Theresa Quinones

Represented By  
Andrew P Altholz  
Suresh C Pathak

**Trustee(s):**

David Seror (TR)

Represented By  
Nancy H Zamora

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 17, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11503 RALPH L FERGUSON**

**Chapter 7**

Adv#: 1:17-01086 Quinones v. FERGUSON

**#15.00** Status conference re: complaint (1) To determine debt to be nondischargeable under 11 USC section 523(a)(6); (2) to determine debt to be non dischargeable under 11 USC section 523(a)(2)

fr. 12/20/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

RALPH L FERGUSON

Represented By  
Suresh C Pathak

**Defendant(s):**

RALPH L FERGUSON

Pro Se

**Plaintiff(s):**

Theresa Quinones

Represented By  
Andrew P Altholz

**Trustee(s):**

David Seror (TR)

Represented By  
Nancy H Zamora



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12282 Alfredo Velasco Palma**

**Chapter 7**

**#1.00** Trustee's final report and applications for compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Trustee

LEA Accountancy, LLP, Accountants for Trustee

fr. 12/14/17;

Docket 73

**Tentative Ruling:**

The Court had concerns about the chapter 7 trustee's administration of this case and the amount of chapter 7 trustee and professional fees that were incurred. After assessing the specifics, the Court has concluded that the reduced fees sought to be paid are appropriate for approval on a final basis.

**BACKGROUND**

On August 8, 2016 (the "Petition Date"), Alfredo Velasco Palma (the "Debtor") filed a voluntary chapter 7 petition. In his petition, the Debtor listed his residence address as "7702 Oakdale Avenue, Winnetka, CA 91306." (Doc. 1, at p. 2.) In his schedules, the Debtor listed his interest in the real property located at 962 N. Hunters Hill Drive, Walnut, California, 91789 (the "Property"), stating he owned the Property in joint tenancy and that the Property was community property. (Doc. 1, at p. 8.) Pursuant to California Code of Civil Procedure § 704.730, the Debtor claimed a homestead exemption in the Property in the amount of \$175,000. (Doc. 1, at p. 18.)

On March 14, 2016, the Debtor finalized the divorce from his spouse, Mary Palma. (Declaration of David Seror ("Seror Decl."), doc. 31, ¶ 5.) Pursuant to the state court dissolution judgment, the Property had been ordered to be sold, and Mary Palma was entitled to receive half of the sale proceeds, plus a \$60,000 equalization payment to be

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Velasco Palma**

**Chapter 7**

paid from the Debtor’s share of the sale proceeds, provided there were sufficient funds. Proceeds from the sale also were to be used to pay off a judgment lien in favor of Los Angeles Federal Credit Union. (Doc. 31, Exh. 3, at pp. 9–13).

David Seror (the “Trustee”) was appointed chapter 7 trustee. On October 27, 2016, the Trustee filed a motion to sell the Property (“Sale Motion”) [doc. 31]. The associated purchase agreement was negotiated and executed prepetition. (*Id.*, ¶ 9.) The Trustee requested that the sale be approved as a private sale, i.e., not subject to overbid. (*Id.*, ¶ 10.) Ms. Palma consented to the sale of the Property pursuant to the Sale Motion. (Seror Decl., ¶ 6.)

On October 27, 2016, the Trustee filed an objection to the Debtor’s homestead exemption (“Objection to Exemption”) [doc. 30], on the grounds that the Debtor did not live at the Property as of the Petition Date and thus the Property did not qualify as a homestead under California law. On November 3, 2016, the Debtor filed an opposition to the Objection to Exemption [doc. 38]. On November 10, 2017, the Trustee filed a reply [doc. 42]. On November 28, 2016, the Court entered an order sustaining the Objection to Exemption and disallowing the Debtor’s homestead exemption in its entirety [doc. 52].

On November 22, 2016, the Court entered an order granting the Sale Motion and authorizing the sale of the Property (“Sale Order”) [doc. 49]. The sale proceeds were distributed as follows:

<b>Payee</b>	<b>Amount</b>
Seller Credit Buyer Closing Costs	\$2,700.00
Chase Payoff	\$361,511.89
Payoff to Capital One	\$5,719.92
Payoff to Anaya Law Group	\$32,392.40
Payoff to Wynn Law Group	\$19,920.51
2016/2017 1 <sup>st</sup> Half Taxes	\$1,561.38

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Velasco Palma**

**Chapter 7**

Commissions to ReMAX	\$29,600.00
Escrow Fees/Costs NHD Report	\$884.00
Mary Palma Equalization Payment	\$60,000.00
50% Proceeds to Mary Palma	\$169,094.69
Escrow Closing Costs	\$2,903.34
Title Fees/Costs	\$2,650.00

(Doc. 72, at pp. 6–7.)

On May 22, 2017, LEA Accountancy, LLP (“LEA”), accountant for the Trustee, filed an application for compensation [doc. 63], requesting approval of \$3,083.50 in fees and \$132.33 in costs. On July 6, 2017, Brutzkus Gubner LLP (“Brutzkus”), counsel for the Trustee, filed an application for compensation [doc. 65], requesting approval of \$12,443.00 in fees and \$503.96 in costs.

On November 3, 2017, the Trustee filed a final report and application for compensation (“Final Report”) [doc. 72]. The Final Report states that the estate has \$36,166.64 cash in hand. (Doc. 72, at p. 13.) The Trustee requests approval of \$31,795.27 in trustee fees and \$10.41 in costs. The Final Report sets forth additional fees and costs, to be paid as follows:

<b>Applicant</b>	<b>Total Requested</b>	<b>Proposed Payment</b>
Trustee, Fees	\$31,795.27	\$14,000.00
Trustee, Expenses	\$10.41	\$8.82
Brutzkus, Fees	\$12,443.00	\$10,537.43
Brutzkus, Expenses	\$503.96	\$426.78
LEA, Fees	\$3,083.50	\$2,611.28

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

10:30 AM

CONT... **Alfredo Velasco Palma**

Chapter 7

LEA, Expenses	\$132.33	\$112.06
---------------	----------	----------

(*Id.*) The Trustee also proposes to make a payment of \$8,321.22 to pay postpetition taxes to the Franchise Tax Board (the total postpetition taxes owed are \$9,826.01). After the proposed payment of trustee and professional fees, Court fees, and postpetition taxes, the Final Report states that claims of timely, allowed general unsecured creditors in the total amount of \$62,940 will receive \$0.00. (*Id.*, at 14.) On the other hand, the Final Report reflects that Ms. Palma's unsecured claim, in the amount of \$60,000, was "already paid through escrow." (Doc. 72, at p. 11.) Tardily filed claims of general unsecured creditors, in the total amount of \$6,465.70, will receive \$0.00. (*Id.*)

### DISCUSSION

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. 11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Absent extraordinary circumstances, chapter 7 trustee fees are presumed reasonable pursuant to 11 U.S.C. § 326 and 330(a)(7). *See Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 921 (9th Cir. B.A.P. 2012).

On the other hand, if extraordinary circumstances exist . . . the bankruptcy court may be called upon in those cases to determine whether there exists a rational relationship between the amount of the commission and the type and level of services rendered. . . . As for chapter 7, 12, and 13 trustee fees, when confronted with extraordinary circumstances, the bankruptcy court's examination of the relationship between the commission rate and the services rendered may, but need not necessarily include, the § 330(a)(3) factors and a lodestar analysis.

*Id.* "[T]rustee compensation exceeding distributions to unsecured creditors is not *per se* an extraordinary circumstance." *Fear v. United States Trustee (In*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Velasco Palma**

**Chapter 7**

*re Ruiz*), 541 B.R. 892, 897 (9th Cir. B.A.P. 2015).

"Extraordinary circumstances" may include the following:

- (1) Case administration falls below acceptable standards;
- (2) Trustee duties are delegated to an attorney or other professional;
- (3) Trustee fees are greater than the amount left for unsecured claims;
- (4) Disbursements are high in relation to trustee services performed, e.g., a case filed with a lot of cash or liquid assets;
- (5) Disbursements are high in relation to trustee services performed, e.g., a case in which the trustee operates the business;
- (6) Disbursements are high in relation to trustee services performed, e.g., in cases in which there are significant disbursements without proportionate effort by the trustee; and
- (7) Artificial inflation of the estate by way of carve out or short sale.

*See In re Scoggins*, 517 B.R. 206, 217 (Bankr. E.D. Cal. 2014). "A maximum commission on a sale in which the trustee merely assumes and completes a sale contract that was executed before bankruptcy may exceed reasonable compensation" and may be considered an "extraordinary" circumstance. *Id.* (citing *In re McKinney*, 383 B.R. 490, 492 (Bankr. N.D. Cal. 2008)).

In *In re McKinney*, the chapter 7 debtor signed a contract to sell his real property while his bankruptcy case was pending. The trustee learned about the sale before it closed and contacted a broker, who advised the trustee that the sale price was reasonable. The trustee's counsel then obtained an order authorizing the sale and the trustee closed the sale on behalf of the estate, receiving net proceeds of \$210,636 after all liens were paid. When she submitted her fee application and proposed distribution, the trustee sought compensation in the maximum statutory amount of \$35,891. Her counsel sought compensation in the amount of \$20,556, and her accountant sought compensation in the amount of \$3,432. Allowed unsecured and priority claims, other than professional fees, totaled \$34,990. 383 B.R. at 492. The bankruptcy court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Alfredo Velasco Palma**

**Chapter 7**

reduced the trustee's fee award to \$15,000, on the grounds that the amount the trustee requested pursuant to the statutory cap under 11 U.S.C. § 326(a)—\$35,891—was disproportionate to the work the trustee was required to perform. The court also discounted the trustee's fees because of errors in her fee application. *Id.* at 496.

The facts of the pending case are similar to those in *In re McKinney*. Prepetition, Mary Palma entered into an agreement to sell the Property. Based on this prepetition sale agreement, the Trustee filed the Sale Motion. The Trustee did not hire a broker or negotiate the sale agreement. Brutzkus prepared the Sale Motion, the Objection to Exemption and the supporting reply. Because the Debtor did not reside at the Property on the petition date, the legal issues in the Objection to Exemption were relatively straightforward.

Three nonpriority unsecured claims were filed: two were filed by Mary Palma, and one was untimely filed by Christine Palma. Mary Palma's \$60,000 unsecured claim was paid out of the Property's sale proceeds. The other filed claims will not be receiving any distribution from the Debtor's estate.

The Debtor's case shows "extraordinary circumstances" of the sort identified in *In re Scoggins*. The Trustee has voluntarily reduced his payable fees to \$14,000. In light of the voluntary reductions in fees to be paid and the specific facts of the Debtor's case, the Court will allow the fees as follows:

Trustee – approve fees of \$14,000 and reimbursement of expenses of \$8.82.

Brutzkus, counsel to chapter 7 trustee – approve fees of \$10,537.43 and reimbursement of expenses of \$426.78.

LEA, accountant to chapter 7 trustee – approve fees of \$2,611.28 and reimbursement of expenses of \$112.06.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Velasco Palma**

**Chapter 7**

is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Alfredo Velasco Palma

Pro Se

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Jessica L Bagdanov  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

1:00 PM

**1:16-11351 Oscar Navarro**

**Chapter 11**

**#2.00** U.S. trustee motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 121

**Tentative Ruling:**

On December 27, 2017, the reorganized debtor filed an opposition [doc. 127] to the pending motion and a notice of errata [doc. 128]. The reorganized debtor contends that he paid \$325 in fees to the United States Trustee in December 2017.

Has the debtor paid United States Trustee fees owing for the fourth quarter of 2017?  
Can he afford to do so?

**Party Information**

**Debtor(s):**

Oscar Navarro

Represented By  
Onyinye N Anyama



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

1:00 PM

1:16-11351 Oscar Navarro

Chapter 11

#3.00 Post-confirmation status conference re chapter 11 case

fr. 6/16/16; 12/1/16; 2/16/17; 3/9/17; 4/6/17; 5/4/17;  
7/6/2017; 8/17/17; 12/21/17

Docket 1

**Tentative Ruling:**

Local Bankruptcy Rule ("LBR") 3020-1(b) provides that a postconfirmation status report must include:

- (1) A schedule listing for each debt and each class of claims: the total amount required to be paid under the plan; the amount required to be paid as of the date of the report; the amount actually paid as of the date of the report; and the deficiency, if any, in required payments; [and a]
- (2) A schedule of any and all postconfirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon[.]

In his *Amended Post-Confirmation Status Report* [doc. 124], the reorganized debtor did not include a schedule of plan payments pursuant to LBR 3020-1(b)(1) or a schedule of postconfirmation tax liabilities pursuant to LBR 3020-1(b)(2).

The reorganized debtor acknowledges that he has not made required payments to priority tax claimant(s). Because the reorganized debtor does not discuss the amount paid, and the amount due, it also is not clear if he has made all required plan payments to nonpriority unsecured creditors.

When will the reorganized debtor become current with these payments? The Court does not intend to enter a final decree unless and until the debtor is current with his plan payments.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Oscar Navarro**

**Chapter 11**

**Debtor(s):**

Oscar Navarro

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13118 Gloria Angelica Garcia**

**Chapter 11**

**#4.00** Confirmation hearingre: amended chapter 11 plan

Docket 115

**Tentative Ruling:**

Confirm *[Third] Amended Individual Debtor's Chapter 11 Plan of Reorganization* dated December 14, 2017 [doc. 115]. No later than **May 3, 2018**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. A postconfirmation status conference will be held on **May 17, 2018 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

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

**Debtor(s):**

Gloria Angelica Garcia

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Kevin Tang  
Edith Walters  
Clarissa D Cu

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13118 Gloria Angelica Garcia**

**Chapter 11**

**#5.00 Status conference re chapter 11 case**

fr. 12/22/16; 4/20/17; 5/25/17; 7/6/17; 9/14/17; 11/2/17; 12/7/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gloria Angelica Garcia

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

1:00 PM

1:17-12131 Virgillo Armando Cerna Choto

Chapter 7

#6.00 Motion to disgorge compensation pursuant to 11 U.S.C. § 329

**Case dismissed 08/29/2017**

Docket 20

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13249 Lina Mabel Gallucci**

**Chapter 7**

**#7.00** U.S. trustee's motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) or 707(b)(3) with a 180-Day bar to refile pursuant to 11 U.S.C. §§ 105(a) and 109(g)

Docket 7

**Tentative Ruling:**

The Court will dismiss this case pursuant to 11 U.S.C. § 707(a).

On December 6, 2017, the Court sent notice to the debtor informing her that she must file her schedules and statements, or file a motion extending the deadline by which to file her schedules and statements, no later than December 18, 2017 [doc. 6]. To date, the debtor has not filed her schedules and statements or filed a motion to extend the deadlines by which to file those documents. In addition, the debtor did not attend her initial § 341(a) meeting of creditors.

At this time, the Court will not enter a bar to the debtor filing another bankruptcy case.

The U.S. Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Lina Mabel Gallucci	Pro Se
---------------------	--------

**Trustee(s):**

Nancy J Zamora (TR)	Pro Se
---------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#8.00 Debtor's motion for authority to incur secured debt**

Docket 429

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On July 18, 2014, Gingko Rose Ltd. ("Debtor") filed a voluntary chapter 11 petition.

On March 19, 2015, the Court entered an order suspending this chapter 11 case (the "Stay Order") [doc. 255]. In the Stay Order, the Court stated that this case "is suspended until completion of the State Court Malicious Prosecution Case... or until further order of the court (the 'Interim Period') pursuant to 11 U.S.C. § 305(a)...." The Stay Order provided that Debtor must comply with the provisions of 11 U.S.C. § 364.

On December 18, 2017, Debtor filed a motion to incur postpetition secured debt (the "Motion") [doc. 429] and the Declaration of David Darwish (the "Darwish Declaration") [doc. 430]. In the Motion, Debtor requests authority to execute a promissory note and deeds of trust in favor of Foirs, Inc. ("Foirs") in the amount of \$3,321,781.05, which Debtor asserts is the amount Foirs paid to satisfy a judgment against Debtor.

In the Darwish Declaration, Mr. Darwish, a principal of Debtor, provides that Foirs is owned by his son and daughter. Darwish Declaration, ¶¶ 1-2. Mr. Darwish also attached several deeds of trust in favor of Foirs, dated December 1, 2017. Darwish Declaration, Exhibit B. Debtor has not provided a promissory note between Debtor and Foirs.

On January 3, 2018, judgment creditors Jack Vaughn, Esmeralda Hernandez, Wayne Hart, Carlos Rodriguez and Ernest Johnson ("Judgment Creditors") filed an opposition to the Motion (the "Opposition") [doc. 434]. Judgment Creditors assert

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

---

2:00 PM

CONT... **Gingko Rose Ltd.**

Chapter 11

that Debtor cannot seek authorization by the Court to enter into a postpetition financing agreement *after* entering into that agreement. On January 12, 2018, Debtor filed a reply to the Opposition (the "Reply") [doc. 437]. In the Reply, Debtor states that the promissory note between Foirs and Debtor includes a provision that states that authorization by the Court is a condition precedent to executing the promissory note and that Foirs is entitled to equitable subrogation of its alleged lien.

## II. ANALYSIS

Under Federal Rule of Bankruptcy Procedure ("FRBP") 4001(c)(1)(A), "[a] motion for authority to obtain credit... shall be accompanied by a copy of the credit agreement and a proposed form of order." Debtor has not provided the Court with a copy of the promissory note between Debtor and Foirs. Under FRBP 4001(c)(1)(B), a motion must include "all material provisions of the proposed credit agreement" as well as "describe the nature and extent of each provision" provided in FRBP 4001(c)(1)(B). Debtor has also not provided this information, and, as a result, the Motion is procedurally improper. Nevertheless, the Court will address the merits below.

### *A. Postpetition Financing under 11 U.S.C. § 364(c)*

Pursuant to 11 U.S.C. § 364(c)—

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

Pursuant to 11 U.S.C. § 364(d)(1)—

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Gingko Rose Ltd.**

**Chapter 11**

that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

Pursuant to 11 U.S.C. § 364(d)(2), "[i]n any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection." Courts have articulated a three-part test to determine whether a debtor is entitled to § 364(c) financing: (1) the trustee or the debtor is unable to obtain unsecured credit under § 364(b); (2) the credit transaction is necessary to preserve the assets of the estate; and (3) the terms of the transaction are fair, reasonable, and adequate given the circumstances of debtor and the proposed lender. *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

First, Debtor has not shown that it was unable to obtain unsecured credit. *See In re Photo Promotion Assocs., Inc.*, 89 B.R. 328, 333 (S.D.N.Y. 1988) ("Section 364(c), therefore, is unavailable unless a prospective creditor has refused to extend credit under section 364(a)."). In fact, it appears Foirs was willing to extend credit (by paying off the judgment) without first obtaining a security interest in Debtor's property. As such, this element not being satisfied, the Motion may be denied on this basis alone.

Next, Debtor has not shown that the transaction is necessary to preserve the assets of the estate. In fact, Foirs apparently already paid Judgment Creditors. Debtor has not stated that Foirs intends to take any action against the estate if the Court does not approve this transaction. Consequently, this element is also not satisfied.

Moreover, the Ninth Circuit Court of Appeals has "interpreted section 364(c)(2) as requiring a debtor to obtain the bankruptcy court's authorization *before* incurring secured debt." *In re Harbin*, 486 F.3d 510, 521 (9th Cir. 2007) (emphasis in *Harbin*). "[I]f the debtor fails to obtain prior authorization, the bankruptcy court may exercise its corrective power to rescind the transaction." *Id.* (citing *In re McConville*, 110 F.3d 47, 50 (9th Cir. 1997)). "[N]othing in the language of the Bankruptcy Code precludes the court from considering *nunc pro tunc* authorization of the refinancing as one

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

2:00 PM

CONT... **Gingko Rose Ltd.**

**Chapter 11**

possible remedy in response to the 'equities of the situation' before it." *Id.*, at 522.

Here, Debtor asserts that the promissory note includes a condition precedent that conditions the effectiveness of the promissory note and deeds of trust on the Court's approval of the postpetition financing. However, Debtor has not attached the promissory note. The deeds of trust attached to the Darwish Declaration include no such language. As such, the evidence before the Court suggests that Debtor encumbered property of the estate without *prior* approval of the Court. Consequently, the Court may rescind the transaction. *Harbin*, at 521. In light of the above, the Court will deny Debtor's request to incur postpetition secured debt.

***B. Equitable Subrogation***

"[S]ubrogation is the substitution of one party in place of another with reference to a lawful claim, demand or right. It is a derivative right, acquired by satisfaction of the loss or claim that a third party has against another.... [W]hen the doctrine of subrogation applies, the subrogee succeeds to the legal rights and claims of the subrogor with respect to the loss or claim." *In re Hamada*, 291 F.3d 645, 649 (9th Cir. 2002). In *Hamada*, the court referred to California law on subrogation, "which provides for equitable subrogation if the party seeking subrogation meets five specific criteria." *Id.*, at 651.

First, the claimant must have paid the debt owed to the lienholder in order to protect the claimant's own interest. Second, the claimant must not have acted as a volunteer. Third, the claimant could not have been primarily liable for the debt he paid. Fourth, the claimant must have paid the entire debt owed to the lienholder. And, fifth, the subrogation must not work an injustice to the rights of others.

*Id.* (quoting *Fidelity Nat. Title Ins. Co. v. U.S. Dept. of the Treasury*, I.R.S., 907 F.2d 868, 870 (9th Cir. 1990)).

First, the doctrine of equitable subrogation is a separate issue from Debtor's authority to incur postpetition debt. Debtor brings up equitable subrogation for the first time in the Reply, such that Judgment Creditors have not been given an opportunity to respond to this argument.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Gingko Rose Ltd.**

**Chapter 11**

Nevertheless, equitable subrogation does not apply here. Nothing in the record demonstrates that Foirs paid the judgment to Judgment Creditors in order to protect Foirs' own interest or that the judgment was secured. Next, it is unclear if Foirs has paid the entire debt owed to Judgment Creditors, because Judgment Creditors are litigating appeals against Debtor, which Judgment Creditors assert may result in additional liability. Finally, it is unclear if Foirs acted as a volunteer. As a result, Debtor may not rely on equitable subrogation as a basis for the Court to grant Foirs any liens against property of the estate.

**IV. CONCLUSION**

The Court will deny the Motion.

Respondents must submit an order within seven (7) days.

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#9.00** Application to employ Brutzkus Gubner and Resch Polster & Berger LLP as joint special litigation counsel effective as of November 22, 2017

Docket 111

**Tentative Ruling:**

In light of the applicants' additional disclosures in their reply [doc. 121], and given that the applicants have otherwise met the requirements of 11 U.S.C. § 327(e) and Federal Rule of Bankruptcy Procedure 2014, the Court will approve the application to employ Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as joint special litigation counsel to the chapter 7 trustee.

The chapter 7 trustee must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**1:17-13053 Richard James Quiroz**

**Chapter 7**

**#10.00** Motion for an order vacating dismissal entered on or about  
12/04/2017 and for reinstatement of the debtor's chapter 7 case

Docket 19

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Richard James Quiroz

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**1:17-13053 Richard James Quiroz**

**Chapter 7**

**#11.00** U.S. Trustee's motion to amend order dismissing case to include a one-year bar to re-filing pursuant to 11 U.S.C.

fr. 1/11/18

Docket 15

**Tentative Ruling:**

If the debtor does not appear for cross-examination, or the Court determines after the debtor's cross-examination that the debtor did not file this case in good faith, the Court will grant the motion to amend the dismissal order to include a 180-day bar to re-filing.

Here, the case was dismissed because the debtor did not timely file his schedules and statements. 11 U.S.C. § 707(a). In addition to the debtor's noncompliance with 11 U.S.C. § 707(a), the U.S. Trustee seeks to amend the dismissal order to include the debtor's bad faith as another basis for dismissal of this case. Pursuant to 11 U.S.C. § 707(b)(3)—

(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 paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

- (A) whether the debtor filed the petition in bad faith; or
- (B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

The following factors are generally considered when making a determination under § 707(b)(3)(A):

1. Whether the chapter 7 debtor has a likelihood of sufficient future income to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Richard James Quiroz**

**Chapter 7**

fund a chapter 11, 12, or 13 plan which would pay a substantial portion of the unsecured claims;

2. Whether debtor's petition was filed as a consequence of illness, disability, unemployment, or other calamity;
3. Whether debtor obtained cash advances and consumer goods on credit exceeding his or her ability to repay;
4. Whether debtor's proposed family budget is excessive or extravagant;
5. Whether debtor's statement of income and expenses misrepresents debtor's financial condition;
6. Whether debtor made eve of bankruptcy purchases;
7. Whether debtor has a history of bankruptcy petition filings and dismissals;
8. Whether debtor has invoked the automatic stay for improper purposes, such as to delay or defeat state court litigation;
9. Whether egregious behavior is present.

*In re Mitchell*, 357 B.R. 142, 154-55 (Bankr. C.D. Cal. 2006); *see also In re Siegenberg*, 2007 WL 6371956, at \*4 (Bankr. C.D. Cal. Jul. 30, 2007). No single factor is dispositive. *Mitchell*, 357 B.R. at 155.

Here, based on the debtor's repeated, dismissed bankruptcy cases and apparent inaccuracies in his latest petition, it appears that the motion is based on the seventh and ninth factors. Unless the debtor provides a reasonable explanation of his conduct, the Court is inclined to dismiss this case with a 180-day bar. 11 U.S.C. §§ 105(a), 109 (g).

**Party Information**

**Debtor(s):**

Richard James Quiroz

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 18, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Richard James Quiroz**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 18, 2018

Hearing Room 301

2:00 PM

1:14-13456 Gingko Rose Ltd.

Chapter 11

#12.00 Application by debtor and debtor in possession to employ James J. Little and Trial Advocacy Group, LLC as special litigation counsel and approval of hourly fee

Docket 428

**Tentative Ruling:**

The applicant has not provided sufficient information regarding whether the debtor's principals and/or affiliates, who/which applicant also represents ("Mr. Little and TAG are representing the Debtor and affiliated companies in various state court litigation matters in which the Debtor is involved . . .") [Application, at p. 3, para. 5], will seek to pay their liability using the debtor's assets. The applicant must furnish additional information regarding this possibility, such as whether there exists an indemnity, guaranty or other similar agreement between the debtor and its principals/affiliates.

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:16-13009 Ronald Asher Halper and June Halper

Chapter 7

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 12/6/17

Docket 41

\*\*\* VACATED \*\*\* REASON: Order ent 1/8/18 approving stip to cont to  
3/14/18 at 9:30 a.m.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ronald Asher Halper

Represented By  
Rob R Nichols

**Joint Debtor(s):**

June Halper

Represented By  
Rob R Nichols

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Jennifer C Wong

**Trustee(s):**

David Seror (TR)

Represented By  
Robert A Hessling

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11012 Hans Jurgen Briese**

**Chapter 7**

**#2.00** Motion for relief from stay [RP]

HSBC BANK USA N.A.  
VS  
DEBTOR

fr. 6/7/17; 9/13/17; 10/25/17; 12/20/17

Docket 8

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hans Jurgen Briese

Represented By  
Bahram Bahram Madaen

**Movant(s):**

HSBC Bank USA, National

Represented By  
Erica T Loftis

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:14-10077 Oksana Grigorieva

Chapter 13

#3.00 Motion for relief from stay [AN]

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT  
VS  
DEBTOR

fr. 1/10/17

Docket 68

**Tentative Ruling:**

On January 6, 2014, Oksana Grigorieva (the "Debtor") filed a chapter 13 petition. On October 10, 2014, the Court entered an order confirming the Debtor's chapter 13 plan [doc. 50]. Under the Debtor's chapter 13 plan (the "Plan"), the Debtor must pay a 14% dividend to nonpriority unsecured creditors. (Doc. 47, at p. 5.) The Plan also provides that: "[t]he Debtor shall incur no debt greater than \$500.00 **without prior court approval** unless the debt is incurred in the ordinary course of business pursuant to 11 U.S.C. §1304(b) or for medical emergencies." (*Id.*, at p. 5.)

On April 8, 2015, the Debtor retained White, Zuckerman, Warsavsky, Luna & Hunt ("Movant"), a forensic accounting firm, to obtain an increase in her monthly child support award. (Declaration of Lucie Mahserejian, ¶ 6.) According to Movant, in connection with Movant's services, the Debtor incurred a substantial bill in the amount of \$230,887.24. A significant portion of the bill has been paid by the Debtor's child's father. However, there remains an unpaid postpetition balance of \$108,887.24. (*Id.*, ¶ 10k.)

In its reply, Movant describes the above debt as a "post-petition accounting debt." (Doc. 77, at p. 2.) However, despite the provisions of the Plan, neither the Debtor nor Movant sought or obtained Court approval to incur the debt allegedly owed to Movant. Because the Court did not authorize the retention of Movant, and the Debtor incurring a debt to Movant, the Court questions whether it is appropriate to grant relief from the automatic stay to allow Movant to pursue payment from the Debtor, outside of filing a claim to be paid through the Plan (if and to the extent that the claim

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Oksana Grigorieva**  
is allowed).

**Chapter 13**

Because the parties have not discussed the impact of the relevant Plan provision on Movant's request for relief, the Court intends to continue the hearing for the parties to provide briefing on this issue.

In addition, if Movant were permitted to seek a judgment against the Debtor from a nonbankruptcy court, and obtained such a judgment, it is unclear whether Movant intends to levy against the child support payments. Movant's pleadings contain conflicting representations regarding how Movant intends to collect on any judgment it obtains, prior to the Debtor's completion of the Plan.

The parties should be prepared to discuss a continued hearing date and associated briefing schedule.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

**Debtor's Evidentiary Objections to the Declaration of Lucie Mahserejian** [doc. 75]

para. 8: sustained as to "*as such, Debtor's indebtedness to WZWL&H is not dischargeable*," overruled as to the remainder of para. 8

10a-k, 11, 13a-g, 17 and 18: sustained

**Debtor's Evidentiary Objections to the Declaration of Richard Mark Garber** [doc. 76]

para. 18: overruled

**Movant's Evidentiary Objections to the Declaration of Oksana Grigorieva** [doc.78]

paras. 8, 9, 10, 11: overruled

paras. 5, 6, 7, 13, 16, 17 and 19: sustained

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Oksana Grigorieva Chapter 13**  
**Movant's Evidentiary Objections to the Declaration of Daren Schlecter [doc. 79]**

paras. 4, 5, 6, 8: sustained

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

**Debtor(s):**

Oksana Grigorieva

Represented By  
Daren M Schlecter  
Jeff Neiderman

**Movant(s):**

White Zuckerman Warsawsky Luna

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:12-19851 Mark Douglas Richards and Ana Marie Richards

Chapter 13

#4.00 Motion for relief from stay [PP]

KEYBANK N.A.  
VS  
DEBTOR

fr. 1/10/18

Docket 43

\*\*\* VACATED \*\*\* REASON: motion withdrawn on 1/22/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mark Douglas Richards

Represented By  
Michael H Raichelson

**Joint Debtor(s):**

Ana Marie Richards

Represented By  
Michael H Raichelson

**Movant(s):**

KeyBank National Association

Represented By  
Scott S Weltman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:12-19687 Ric Saenz and Maria Milagros Saenz**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

fr. 11/22/17; 12/6/17; 1/10/18

Docket 71

**Tentative Ruling:**

**Ruling from 11/22/17**

Grant motion on the terms requested unless debtors are current on postpetition payments.

**Party Information**

**Debtor(s):**

Ric Saenz

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Maria Milagros Saenz

Represented By  
Kevin T Simon

**Movant(s):**

NATIONSTAR MORTGAGE, LLC

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#6.00** Motion for relief from stay [RP]

US BANK N.A.  
VS  
DEBTOR

fr. 8/9/17, 10/18/17; 11/22/17; 12/20/17

Docket 85

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Movant(s):**

US Bank National Association, As

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11071 Jose Uribe**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 12/6/17

Docket 27

**\*\*\* VACATED \*\*\* REASON: APO entered 1/17/18 [doc. 33]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jose Uribe

Represented By  
Donald E Iwuchuku

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Darlene C Vigil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:17-12434 Robin DiMaggio

Chapter 7

#8.00 Motion for relief from stay [AN]

PLAINTIFF FORUM ENTERTAINMENT GROUP, INC.  
VS  
DEBTOR

Docket 29

**Tentative Ruling:**

Deny. Movant has not shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the debtor. The Court also will not annul the automatic stay. Movant has not identified what, if any, acts were taken postpetition in violation of the stay.

On December 19, 2017, movant filed an adversary proceeding against the debtor, asserting claims for relief under 11 U.S.C. §§ 727(a) and 523(a)(2)(A), (a)(4) and (a)(6). This Court will adjudicate these claims in the pending adversary proceeding.

Notwithstanding the foregoing, movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains any right to file a proof of claim in the debtor's bankruptcy case under 11 U.S.C. § 501.

Respondent must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Movant(s):**

Forum Entertainment Group, Inc.

Represented By  
Sandeep J Shah  
Sanaz S Bereliani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Robin DiMaggio**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:16-13405 Sandra Marie Harvey**

**Chapter 7**

**#9.00** Motion for relief from stay [PP]

BANK OF THE WEST  
VS  
DEBTOR

Docket 36

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Sandra Marie Harvey

Represented By  
Daniel King

**Movant(s):**

Bank of the West

Represented By  
Mary Ellmann Tang

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13185 Daniele C Kenney**

**Chapter 7**

**#10.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Daniele C Kenney

Represented By  
David S Hagen

**Movant(s):**

Nationstar Mortgage LLC d/b/a Mr.

Represented By  
Jennifer C Wong

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni

Chapter 13

#11.00 Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

Docket 47

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10796 Eloy Medina, Jr.**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

SETERUS, INC.  
VS  
DEBTOR

Docket 34

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Eloy Medina Jr.

Represented By  
Joshua L Sternberg



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Eloy Medina, Jr.**

**Chapter 13**

**Movant(s):**

Seterus, Inc. as the authorized

Represented By  
Nichole Glowin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:17-11167 Caridad Salas Hileman

Chapter 13

#13.00 Motion for relief from stay [RP]

HSBC BANK USA, NA  
VS  
DEBTOR

fr. 12/13/17(stip)

**stip for adequate protection filed 1/23/18**

Docket 35

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Caridad Salas Hileman

Represented By  
Ryan A Stubbe

**Movant(s):**

HSBC BANK USA NATIONAL

Represented By  
Sean C Ferry

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Caridad Salas Hileman**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, January 24, 2018

Hearing Room 301

9:30 AM

1:17-12331 Sabrina Loralyn Samuel-Lawton

Chapter 13

#14.00 Motion for relief from stay [RP]

DUETSCHKE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

**Stip for adequate protection filed 1/22/18**

Docket 19

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 1/22/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Sabrina Loralyn Samuel-Lawton

Represented By  
Barry E Borowitz

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Mark D Estle

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:16-13350 Jorge Paz**

**Chapter 7**

Adv#: 1:17-01015 State Compensation Insurance Fund v. Paz

**#15.00** Motion to compel responses to interrogatories, sets one and two,  
and requests for production, sets one and two

fr. 10/25/17; 11/15/17; 12/13/17

Docket 14

**Tentative Ruling:**

**11/15/2017 Tentative:**

In accordance with the Court's order entered on October 30, 2017 [doc. 22], the parties should be prepared to discuss the following issues:

The plaintiff did not timely file the motion to compel. The discovery deadline expired on September 1, 2017, and the plaintiff did not file this motion until September 22, 2017.

The allegations in the complaint are based on the defendant's alleged misrepresentations regarding payroll and employee identification from the period between September 20, 2013 and September 20, 2014. In its interrogatories, the plaintiff requests information about the defendant's business for the past ten years. In light of the limited time period at issue in the complaint, the plaintiff should be prepared to discuss why these requests are not overbroad. *See* Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and is proportional to the needs of the case....*) (emphasis added); *and* Fed. R. Civ. P. 26(b)(2)(C)(iii) ("On motion *or on its own*, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that... the proposed discovery is outside the scope permitted by [Fed. R. Civ. P.] 26(b)(1).") (emphasis added).

In addition, the plaintiff did not timely lodge a scheduling order. The Court previously set a mediation deadline of September 15, 2017. Did the parties attend mediation?

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

1:30 PM

CONT...

Jorge Paz

Chapter 7

**Party Information**

**Debtor(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Defendant(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Movant(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Plaintiff(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:16-13350 Jorge Paz**

**Chapter 7**

Adv#: 1:17-01015 State Compensation Insurance Fund v. Paz

**#16.00** Pretrial Conference re: Complaint to determine dischargeability of debt under 11 U.S.C. § 523(a)(2)

fr. 4/19/17; 11/1/17; 11/15/17; 12/13/17

Docket 1

**Tentative Ruling:**

The plaintiff should be prepared to address whether the parties have set a date to depose the defendant and whether the plaintiff now has received the defendant's discovery responses. *See* Declaration of Carlo O. Reyes [doc. 34]. If the plaintiff has received the defendant's discovery responses, does the plaintiff intend to proceed with the pending motion to compel?

When do the parties intend to attend mediation? Have they been in touch with the mediator to set a mediation date?

Because the plaintiff did not timely submit the scheduling order, and in light of the discovery delays, the Court will set new dates and deadlines, as follows:

Deadline to complete one day of mediation: 2/28/18.

Deadline to file pretrial motions: 3/14/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 3/28/18.

Pretrial: 1:30 p.m. on 4/11/18.

The Court will prepare the scheduling order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Jorge Paz**

**Chapter 7**

**Debtor(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Defendant(s):**

Jorge Paz

Pro Se

**Plaintiff(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:16-13350 Jorge Paz**

**Chapter 7**

Adv#: 1:17-01015 State Compensation Insurance Fund v. Paz

**#17.00** Order to show cause why defendant's answer should not be stricken

Docket 31

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Defendant(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Plaintiff(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#18.00** Pretrial Conference re:Complaint to revoke discharges of debtors Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17

Docket 1

**Tentative Ruling:**

The Court will set this matter for trial for two days between **February 28 and March 1, 2018** or during the week of **June 25, 2018**.

TRIAL BRIEFS:

The plaintiff's trial brief must be filed and served **28 days** before trial.

The defendants' trial brief must be filed and served **21 days** before trial.

Any reply brief by the plaintiff must be filed and served **14 days** before trial.

WITNESS TESTIMONY:

Other than the debtors (as witnesses for the chapter 7 trustee **and** on their own behalf), and any other witness **if and to the extent that witness would qualify as a hostile witness for the party which is calling that witness**, the Court will evaluate all direct testimony by declaration. Witnesses may be cross-examined live at trial.

The declarations of the plaintiff's witnesses, in lieu of live direct testimony, must be filed and served **28 days** before trial.

The declarations of the defendants' witnesses, in lieu of live direct testimony, and any evidentiary objections to the declarations filed by the plaintiff must be filed and served **21 days** before trial.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

Any evidentiary objections to the declarations filed by the defendants must be filed and served **14 days** before trial.

**Fourteen (14) days** before trial, the parties also must file a joint witness schedule setting forth the time and date (e.g., which day and a.m. or p.m.) for the direct examination (if applicable) and cross-examination of each witness.

Any responses to the evidentiary objections must be filed and served **7 days** before trial.

The Court will NOT consider the testimony of any witnesses who were not identified on a party's witness list, and will not consider the testimony of any witness which is not relevant to the issues of fact and law for trial.

EXHIBITS:

All trial exhibits must be numbered and marked as required by Local Bankruptcy Rule ("LBR") 9070-1(a).

The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

**One week prior to trial**, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and one copy of a notebook containing all of that party's trial exhibits, or the parties may deliver a joint exhibit notebook.

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial dates.

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:15-11434 YKA Industries Inc a California Corporation**

**Chapter 7**

Adv#: 1:17-01039 GOLDMAN v. Krayndler et al

**#19.00** Pre-trial Conference re: Complaint for avoidance of fraudulent transfers pursuant to 11 U.S.C. sec 548 and 544, and California uniform fraudulent transfer Act 3439.04 and 3439.05; avoidance of unauthorized transfer of property of the estate pursuant to 11 U.S.C. sec 549; and recovery of property of the estate pursuant to 11 U.S.C. sec 550

fr. 6/21/17; 11/15/17

Notice of settlement filed 11/2/17

Docket 1

**Tentative Ruling:**

What is the status of the parties' settlement, as referenced in the *Notice of Settlement* filed on November 2, 2017 [doc. 13]?

**Party Information**

**Debtor(s):**

YKA Industries Inc a California

Represented By  
G Bryan Brannan

**Defendant(s):**

Andrew Krayndler

Pro Se

Erika Krayndler

Pro Se

LNA Builders

Pro Se

**Plaintiff(s):**

AMY L GOLDMAN

Represented By  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... YKA Industries Inc a California Corporation**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Doah Kim  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:13-17080 Randy Jay Ramirez**

**Chapter 7**

Adv#: 1:17-01054 Zamora, Chapter 7 Trustee v. Ramirez, an individual et al

**#20.00** Status Conference re: Complaint for damages for waste;  
turnover of estate property; and unjust enrichment

fr. 8/16/16(stip); 9/13/17(stip); 11/8/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: order of dismissal entered on 12/18/17**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Randy Jay Ramirez	Pro Se
-------------------	--------

**Defendant(s):**

Randy Jay Ramirez, an individual	Pro Se
----------------------------------	--------

Debra Ramirez, an individual	Pro Se
------------------------------	--------

**Plaintiff(s):**

Nancy Zamora, Chapter 7 Trustee	Represented By Jessica L Bagdanov
---------------------------------	--------------------------------------

**Trustee(s):**

Nancy J Zamora (TR)	Represented By David Seror Jessica L Bagdanov Reed Bernet
---------------------	--

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#21.00** Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

fr. 1/10/18

Docket 1

**Tentative Ruling:**

The parties have filed an updated joint status report consenting to entry of a final judgment by this Court.

At the last status conferece, the Court ordered the plaintiff's counsel, Farrah Mirabel, to appear personally at this continued status conference. Ms. Mirabel should be prepared to discuss the dates and deadlines proposed in the tentative ruling from the last status conference, below.

**1/10/2018 Tentative:**

In her answer [doc. 3], filed on December 19, 2017, the defendant requested a jury trial. The parties do not have a right to a jury trial in a nondischargeability action under 11 U.S.C. § 523. *In re Hashemi*, 104 F.3d 1122, 1124-25 (9th Cir. 1996); *In re Sasson*, 424 F.3d 864, 869-70 (B.A.P. 9th Cir. 2005); and *In re Valle*, 469 B.R. 35 (Bankr. D. Idaho 2012).

In the parties' joint status report [doc. 4], the plaintiff did not indicate whether he consents to entry of a final judgment by this Court. If the plaintiff does not consent, does the plaintiff contend that the Court requires the plaintiff's consent to enter a final judgment regarding an action based on 11 U.S.C. § 523(a)(2), (a)(4) and/or (a)(6)? *See Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594 (2011).

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/15/18.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Deadline to file pretrial motions: 4/2/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 4/18/18.

Pretrial: 1:30 p.m. on 5/2/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, January 24, 2018

Hearing Room 301

1:30 PM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

Adv#: 1:17-01093 Zamora v. Yoon

**#22.00** Status conference re complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

stip to continue filed on 12/18/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 12/21/17 continuing hearing to 2/21/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#23.00** Status conference re complaint:  
to determine dischargeability of a debt due to fraud,  
breach of fiduciary duties, and willful and malicious injury

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on March 14, 2018**, to be held in connection with the hearing on the defendant's motion to dismiss [doc. 6].

Appearances are excused on January 24, 2018.

**Party Information**

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Pro Se

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Prevolos

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

- #24.00** Status conference re complaint :
- (1) violation of 11 U.S.C. code 524(a)(2)-debtor discharge injunction.
  - (2) violation of FRBP, Rule 3001(c)(s)(c); failure to file proof of claim re security interest statement of amount to cure default as of petition filing date.
  - (3) violation of FRBP, rule 3001(c)(3)(C), failure to file attachment to appropriate official form re security interest in debtor's principal residence.
  - (4) fraudulent concealment
  - (5) violation of U.S.C. code 157; fraud and deceit
  - (6) declaratory relief

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on March 14, 2018**, to be held in connection with the hearing on a defendant's motion to dismiss [doc. 6].

Appearances are excused on January 24, 2018.

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust	Pro Se
Ocwen Loan Servicing, Inc	Pro Se
Alliance Bancorp, Inc	Pro Se
Alliance Bancorp Estate Trustee	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Steven Mark Rosenberg Chapter 7**

MERS Mortgage Electronic Pro Se

One West Bank Pro Se

DOES 1 through 25, inclusive Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg Pro Se

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#25.00** Status conference re: complaint  
(1) false pretenses, false representation and fraud (Section 523(a)(2);  
(2) fraud or defalcation while acting in a fiduciary capacity (Section 523(a)(4);  
(3) willful and malicious injury (Section 523(a)(6).  
Denial of discharge for false oaths in bankruptcy documents per 11 U.S.C.  
section 727(a)(4)(A)

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on March 7, 2018**, to be held in connection with the hearing on the defendants' motion to dismiss [doc. 10].

Appearances are excused on January 24, 2018.

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

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Pro Se

Haykush Helen Kutyan

Pro Se

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#26.00** Motion by defendant Darin Davis for summary judgment or in the alternative summary adjudication of issues regarding plaintiff's complaint to determine dischargeability of debt pursuant to Bankruptcy Code Section 523(a)(2)(A)

Docket 162

**Tentative Ruling:**

The Court will continue this hearing to **Thursday, February 1, 2018 at 2:30 p.m.**

Appearances are excused on January 24, 2018.

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#27.00** Motion for summary judgment or summary adjudication

Docket 165

**Tentative Ruling:**

The Court will continue this hearing to **Thursday, February 1, 2018 at 2:30 p.m.**

Appearances are excused on January 24, 2018.

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 24, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11503 RALPH L FERGUSON**

**Chapter 7**

Adv#: 1:17-01086 Quinones v. FERGUSON

**#28.00** Motion to extend deadline for plaintiff to file the instant  
adversary complaint retroactively through 10-11-2017  
nunc pro tunc per FRBP Rule 4007 and or 9006

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order denying motion entered 1/23/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

RALPH L FERGUSON

Represented By  
Suresh C Pathak

**Defendant(s):**

RALPH L FERGUSON

Represented By  
Suresh C Pathak

**Plaintiff(s):**

Theresa Quinones

Represented By  
Andrew P Altholz  
Suresh C Pathak

**Trustee(s):**

David Seror (TR)

Represented By  
Nancy H Zamora

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

10:30 AM

**1:15-14205 Maria Socorro Guerrero**

**Chapter 7**

**#1.00 Trustee's Final Report and Applications for Compensation**

Nancy Zamora, Chapter 7 Trustee

Docket 16

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$1,438.42 and reimbursement of expenses of \$111.00.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Maria Socorro Guerrero

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

10:30 AM

**1:14-13981 Encino Center LLC**

**Chapter 11**

**#2.00** Motion for attorney fees and costs re order sustaining objection of Encino Center, LLC to claim of Hayk Shishoyan dba Encino Tailors [Claim No. 8-1] and disallowing claim

fr. 10/19/17; 10/26/17; 11/2/17, 12/7/17; 12/21/17 (stip)

Docket 356

**\*\*\* VACATED \*\*\* REASON: Order entered 1/23/18 continuing hearing to 2/22/18 at 10:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Encino Center LLC

Represented By  
Sandford L. Frey  
Stuart I Koenig  
Marta C Wade  
Fredric J Greenblatt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

1:13-17509 Peter Medvedev and Rita Medvedev

Chapter 11

#3.00 Post Confirmation status conference

fr. 11/19/15; 5/19/16; 11/17/16; 5/18/17; 11/16/17

Docket 157

**Tentative Ruling:**

Having reviewed *Debtors' Post-Confirmation Status Report* and the *Declaration of Joseph E. Caceres* filed in support thereof [doc. 217], the Court will continue this status conference to **1:00 p.m. on May 3, 2018**. If the Court has entered a final decree and order of discharge by that date, the Court will take this status conference off calendar.

Appearances are excused on January 25, 2018.

**Party Information**

**Debtor(s):**

Peter Medvedev

Represented By  
Joseph Caceres

**Joint Debtor(s):**

Rita Medvedev

Represented By  
Joseph Caceres

**Movant(s):**

Peter Medvedev

Represented By  
Joseph Caceres

Rita Medvedev

Represented By  
Joseph Caceres

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**1:15-13753 Alexander Benavides and Maria Enriqueta Benavides**

**Chapter 11**

**#4.00** U.S. Trustee's motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

fr. 12/14/17

Docket 124

**Tentative Ruling:**

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(F) and (K), this case will be dismissed

On November 16, 2017, the United States Trustee filed a motion to dismiss or convert the reorganized debtors' pending chapter 11 case (the "Motion") [doc. 124]. On December 14, 2017, the Court held an initial hearing on the Motion. The reorganized debtors did not appear.

On December 19, 2017, the Court issued a *Notice of Continued Hearing on the United States Trustee's Motion Under 11 U.S.C. § 1112(b) to Dismiss or Convert Case* ("Notice") [doc. 128]. The Notice informed the reorganized debtors of possible adverse consequences that could result from the dismissal or conversion of this case. The Notice instructed the reorganized debtors to file a response to the Motion no later than January 11, 2018 and directed the reorganized debtors to appear on January 25, 2018 at 1:00 p.m. for a continued hearing on the Motion.

The reorganized debtors have not filed a response to the Motion.

Based on the approved Disclosure Statement [doc. 50], it appears that the conversion of this case to chapter 7 will not generate a return to unsecured creditors. Thus, rather than converting this case to one under chapter 7, the Court will dismiss this case.

Movant must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

CONT... Alexander Benavides and Maria Enriqueta Benavides

Chapter 11

**Ruling from 12/14/17**

Based on the issues discussed below, the Court intends to continue this hearing in order for further written notice to be provided to Alexander and Maria Benavides (the "Reorganized Debtors") about the potential economic consequences of dismissal or conversion of their chapter 11 case.

On November 11, 2015, the Reorganized Debtors filed a voluntary chapter 11 petition. At that time, the Court was concerned that the Reorganized Debtors were better suited to effectuate their financial reorganization under chapter 13. After that issue was addressed by the Reorganized Debtors, the Court did not interfere with their choice to reorganize under chapter 11.

On January 5, 2016, the Deutsche Bank National Trust Company ("Deutsche Bank") filed a *Motion to Approve Stipulation for Plan Treatment on First Lien Secured by Real Property at 1722 South Berendo Street, Los Angeles, CA 90006* ("Motion to Approve Stipulation") [doc. 24]. Under the terms of the stipulation ("Stipulation"), the Reorganized Debtors' real property, located at 1722 South Berendo Street, Los Angeles, CA 90006 (the "Property"), was to be valued at \$325,000. Under the chapter 11 plan, Deutsche Bank would have a secured claim of \$325,000 and an unsecured claim of approximately \$244,503.07, and the unsecured claim would be reduced to \$0 upon plan confirmation. Monthly payments to Deutsche Bank would be made pursuant to the Stipulation. (Doc. 24-1, at ¶¶ 2–8.) The Stipulation further provided that **if the Reorganized Debtors' case is dismissed or converted**, Deutsche Bank's lien shall remain a valid secured lien for the full amount due under the original promissory note, and that all payments received under the Stipulation will be applied contractually under the original terms of the deed of trust and original promissory note. (*Id.*, ¶ 18.) On January 28, 2016, the Court entered an order granting the Motion to Approve Stipulation [doc. 42].

On March 25, 2016, the Reorganized Debtors filed an *Individual Debtor's Chapter 11 Plan of Reorganization* ("Plan") [doc. 51]. The Plan incorporated the terms of the Stipulation. On September 27, 2016, the Court entered an order confirming the Plan ("Plan Confirmation Order") [doc. 98]. The Plan Confirmation Order provided that the Reorganized Debtors would not be entitled to receive a discharge until they make

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

CONT... **Alexander Benavides and Maria Enriqueta Benavides** Chapter 11

all required payments to the holders of unclassified claims, priority claims, and general unsecured claims. (Plan Confirmation Order, ¶ 5.)

On October 5, 2017, the Reorganized Debtors filed a *Debtors-in-Possession's Post Confirmation Report on Status of Reorganization* ("Status Report") [doc. 119]. In the declaration attached to the Status Report, the Reorganized Debtors stated that they are current on payments to all creditors and that they had completed all their payments to unsecured creditors. The Reorganized Debtors also stated their intent to file a motion for discharge and final decree on or before January 15, 2018. (Declaration of Alexander Benavides and Maria Enriqueta Benavides, doc. 119, ¶¶ 5, 7, 10.)

On November 13, 2017, the Reorganized Debtors' counsel filed a *Motion to Withdraw as Counsel of Record for Debtor[s] and Debtor[s]-in-Possession* ("Motion to Withdraw") [doc. 121]. Following the hearing held on December 7, 2017, the Court granted the Motion to Withdraw.

On November 16, 2017, the United States Trustee ("UST") filed the pending motion to dismiss or convert the Reorganized Debtors' chapter 11 case ("Motion to Dismiss or Convert") [doc. 124]. Contrary to UST requirements, the Reorganized Debtors have not filed post-confirmation quarterly reports for the second and third quarters of 2017. UST fees are also due in the amount of \$650 for the third quarter of 2017. If the case is dismissed or converted, the Reorganized Debtors will own a minimum of \$325 in UST fees for 4Q of 2017.

Given that the Reorganized Debtors' counsel is no longer representing them, the Court is concerned that the Reorganized Debtors may be unaware of the possible ramifications of the Motion to Dismiss or Convert, *i.e.*, **despite the Court having confirmed the Plan, the Stipulation will become ineffective, the terms of their secured debt will revert to the pre-petition terms, and, if the case is dismissed at this time, the Reorganized Debtors may not get a discharge.**

In order to provide a written notice to the Reorganized Debtors that discusses the potential consequences of dismissal or conversion of their chapter 11 case, before the Court rules on the Motion to Dismiss or Convert, the Court will continue the hearing.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Alexander Benavides and Maria Enriqueta Benavides**

**Chapter 11**

**Debtor(s):**

Alexander Benavides

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Edith Walters

**Joint Debtor(s):**

Maria Enriqueta Benavides

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Edith Walters

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#5.00 Confirmation of Third Amended Chapter 11 Plan**

Docket 196

**Tentative Ruling:**

The Court will continue the hearing to **March 22, 2018 at 1:00 p.m.** to allow the debtor to serve correctly, on the Internal Revenue Service, notice of the plan confirmation hearing and the solicitation package. No later than **January 26, 2018**, the debtor must file and serve notice of the continued plan confirmation hearing and associated deadlines on the Internal Revenue Service (the "IRS") and rectify the following service errors:

The debtor's *Third Amended Chapter 11 Plan of Reorganization Filed by Debtor As Revised on November 15, 2017* (the "Plan") [doc. 209] lists the IRS as a priority tax claimant to be paid through the Plan. (Plan, at p. 5.) Pursuant to Federal Rule of Bankruptcy Procedure 2002(b), the IRS is entitled to notice of the Plan confirmation hearing.

On December 13, 2017, the debtor filed a proof of service of the solicitation package [doc. 216]. The proof of service indicates that the debtor did not serve the solicitation package on the Internal Revenue Service in accordance with Local Bankruptcy Rule 2002-2(c) and Federal Rule of Bankruptcy Procedure 5003(e) and use the addresses set forth in the "Register of Federal and State Government Unit Addresses [F.R.B.P. 5003(e)]" listed in the Court Manual under Appendix D, available on the Court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Rules & Procedures." In accordance with the foregoing, each of the following addresses must be served:

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

United States Attorney's Office  
Federal Building, Room 7516  
300 North Los Angeles Street

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Alfredo Gonzalez Villapando**  
Los Angeles, CA 90012

**Chapter 11**

United States Department of Justice  
Ben Franklin Station  
P. O. Box 683  
Washington, DC 20044

On February 9, 2017, after noting the debtor's deficient service method, the Court previously instructed the debtor on how to serve the IRS.

The debtor must serve the notice and the other materials on the IRS at the addresses noted above. The notice of continued confirmation hearing sent to the IRS must contain the following deadlines:

- Continued hearing on confirmation of the Plan: **March 15, 2018 at 1:00 p.m.**
- Deadline for the debtor to mail to the IRS the approved disclosure statement, the Plan, and to file and serve notice of: (1) the continued confirmation hearing and (2) the deadline to file objections to confirmation: **January 26, 2018.**
- Deadline to file and serve any objections to confirmation: **February 23, 2018.**
- Deadline for the debtor to file and serve a response to any objection by the IRS: **March 5, 2018.**

Appearances on January 25, 2018 are excused.

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

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#5.10 Status conference re chapter 11 case**

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017; 1/11/18

Docket 1

**Tentative Ruling:**

In connection with the continued hearing on confirmation of the debtor's chapter 11 plan, the Court will continue the status conference to **March 22, 2018 at 1:00 p.m.**

Appearances on January 25, 2018 are excused.

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

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17; 12/7/17

Docket 1

**Tentative Ruling:**

On December 11, 2017, the Court entered an *Order Setting (1) Deadlines Concerning Amended Chapter 11 Plan and Disclosure Statement and (2) Continued Status Conference* ("Scheduling Order") [doc. 107]. Pursuant to the Scheduling Order, the debtor was to file an amended chapter 11 plan and disclosure statement no later than January 12, 2018. The debtor also was instructed to appear at a continued status conference on January 25, 2018 at 1:00 p.m. If no amended chapter 11 plan and disclosure statement were filed by January 12, 2018, the debtor was instructed to file a status report no later than January 11, 2018.

On January 11, 2018, the debtor filed an amended chapter 11 plan and disclosure statement [docs. 113, 114]. The Court intends to set a hearing on the approval of the debtor's amended disclosure statement for **March 8, 2018 at 1:00 p.m. No later than January 25, 2018**, the debtor must serve notice of the amended disclosure statement hearing and the deadline to file any objections to the amended disclosure statement.

The Court will continue this status conference to **March 8, 2018 at 1:00 p.m.**, to coincide with the hearing on the approval of the debtor's amended disclosure statement. The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on January 25, 2018 are excused.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#7.00 Motion of United States Trustee to appoint a chapter 11 trustee

Docket 68

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On October 6, 2017, five days before filing her chapter 11 petition, Mehri Akhlaghpour ("Debtor") executed six promissory notes in favor of Emymac, Inc. ("Emymac") in the amount of \$1,164,750. Declaration of Mehri Akhlaghpour ("Akhlaghpour Declaration") [doc. 60], Exhibits 1-6. On the same day, Debtor executed a deed of trust in favor of Emymac, encumbering all of her real properties. Akhlaghpour Declaration, Exhibit 7.

On October 11, 2017, Debtor filed a voluntary chapter 11 petition. On October 25, 2017, Debtor filed her schedules and statements [doc. 11]. In her schedule A/B, Debtor indicated she has an interest in six real properties. In her schedule D, Debtor listed first priority liens against each real property. Debtor also listed six second priority liens in varying amounts in favor of Emymac, totaling \$1,164,750. Debtor did not list the proceeds from the promissory notes anywhere in her schedules. Debtor also did not indicate how the proceeds were used in her Statement of Financial Affairs.

In her latest-amended schedule A/B [doc. 59], Debtor indicated she has an interest in a trust and noted that the value of the trust is "largely duplicative" of the value listed in her schedule A/B. On December 13, 2017, Debtor provided a copy of the trust documents. Akhlaghpour Declaration, Exhibit 8. The trust agreement reflects that the trust is revocable trust, and that the trust holds all of Debtor's scheduled real properties. *Id.*

In her schedule I, Debtor represented that she is an accountant and the Chief Executive Officer of MBA Tax Consultant, Inc. ("MBA"). Aside from MBA, Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

1:00 PM

CONT... **Mehri Akhlaghpour**

**Chapter 11**

listed an interest in seven other corporations in her schedule A/B. In her latest-amended schedule I [doc. 59], Debtor scheduled \$20,666.67 in monthly gross wages, salary and commissions. Debtor also listed \$8,000 in monthly payments of interest and dividends. Debtor did not list any income generated from rental properties. In contrast, in her most recent monthly operating report, for December 2017 [doc. 85], Debtor indicated she receives a total of \$10,375 in rental income from five of her real properties. It is unclear if Debtor's scheduled \$20,666.67 in gross wages, salary and commissions includes the rental income generated from her rental properties.

On November 10, 2017, Mehrdad Vafi filed a complaint against Debtor, requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) based on Mr. Vafi's allegations that Debtor embezzled funds and defrauded Mr. Vafi [1:17-ap-01091-VK]. Attached to the complaint is a decision by the state court (the "State Court Decision"), issued after trial, in which the state court indicated its intention to enter a judgment finding that Debtor is liable for breach of fiduciary duty, conversion and fraud and awarding Mr. Vafi \$1,164,780.28. The State Court Decision is dated September 11, 2017, *i.e.*, less than one month before Debtor filed her chapter 11 petition.

In the State Court Decision, the state court noted that Debtor was Mr. Vafi's accountant and tax preparer, and that Debtor had a power of attorney allowing Debtor to file Mr. Vafi's returns. State Court Decision, p. 3. The state court also noted that Mr. Vafi would provide blank checks to Debtor, believing that Debtor would use the checks to pay Mr. Vafi's taxes. *Id.* The state court found that, instead of using the checks to pay Mr. Vafi's taxes, Debtor would deposit the checks into MBA's account and keep the funds for her own use. State Court Decision, p. 4.

On December 5, 2017, Kamboozia Zarrabi and Farideh Akhlaghpour filed a complaint against Debtor, requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) based on their allegations that Debtor embezzled funds and defrauded them [1:17-ap-01102-VK]. On January 3, 2018, TJ's Metal Manufacturing, Inc. ("TJ's") filed a complaint against Debtor, also requesting nondischargeability of the debt owed to it pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) based on its allegations that Debtor embezzled funds and defrauded TJ's [1:18-ap-01002-VK].



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

On December 29, 2017, the U.S. Trustee (the "UST") filed a motion to appoint a chapter 11 trustee (the "Motion") [doc. 68]. On January 11, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 84]. In the Opposition, Debtor asserts that Emymac made loans to her between 2015 and 2017, based on a verbal agreement between the parties; according to Debtor, Debtor executed the promissory notes and the deed of trust to put the verbal loan agreements into writing. Debtor also states that she and MBA have repaid some of the debt owed to Emymac. On January 18, 2018, the UST filed a reply to the Opposition (the "Reply") [doc. 88]. In the Reply, the UST notes that Debtor previously told the UST that NBS Medical Management, Inc. paid Emymac, not MBA.

## II. ANALYSIS

Pursuant to 11 U.S.C. § 1104—

- (a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—
  - (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
  - (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

"The parties seeking appointment of a Chapter 11 trustee under 11 U.S.C. § 1112(b) (1) and/or 1104(a) have the burden of proving appropriate grounds exist for such appointment by the preponderance of the evidence." *In re Corona Care Convalescent Corp.*, 527 B.R. 379, 384 (Bankr. C.D. Cal. 2015). "Cause and best interest of creditors and other parties are separate and independent bases for granting a motion to appoint a trustee under 11 U.S.C. § 1104(a)." *Id.* "The list of the enumerated 'causes'

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

under Section 1104(a)(1) of the Bankruptcy Code, 11 U.S.C., is nonexhaustive." *In re Pasadena Adult Residential Care, Inc.*, 2015 WL 6443216, at \*14 (Bankr. C.D. Cal. Oct. 23, 2015) (citing *In re Bellevue Place Assocs.*, 171 B.R. 615, 622-623 (Bankr. N.D. Ill. 1994)).

Here, there is cause to appoint a chapter 11 trustee pursuant to 11 U.S.C. § 1104(a)(1). In addition, appointment of a chapter 11 trustee is in the best interests of creditors pursuant to 11 U.S.C. § 1104(a)(2).

First, Debtor has not been forthcoming regarding the scheduled secured debt in favor of Emymac. Debtor executed the promissory notes and the deed of trust in favor of Emymac five days before filing her bankruptcy petition. To date, Debtor has not amended her schedules and/or statements to disclose whether she has the loan proceeds (if there were any) or, if not, to which entity she has transferred the alleged loan proceeds.

In the Opposition, Debtor asserts that Emymac loaned her the subject funds between 2015 and 2017 and that Debtor has repaid some of the loans. Debtor indicated in her schedule D that she owes Emymac a total of \$1,164,750, the same amount reflected in the promissory notes. [FN1]

According to Debtor, Emymac entered into verbal agreements to loan over \$1.6 million to Debtor and to refrain from recording any deeds of trust against Debtor's real properties. There is no corresponding testimony by a representative of Emymac. Debtor's characterization of these transactions is not credible. Why would Emymac loan Debtor in excess of \$1 million without concurrently obtaining a written agreement or promissory notes and without concurrently recording a security interest in Debtor's property? A chapter 11 trustee should investigate such issues as whether Emymac actually made such loans and whether Emymac is an independent party or is related to Debtor.

Although Debtor asserts in her declaration that she may have to file an action to avoid the transfers to Emymac, she does not state that she intends to file such actions. A chapter 11 trustee is in the best position to investigate the alleged loans and the transfers and to file an action avoiding them, if such an action is warranted. Only a bankruptcy trustee or a debtor in possession may file an avoidance action; creditors

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

cannot pursue these actions themselves. 11 U.S.C. § 544.

Aside from the questions raised on account of Debtor's significant, recent transfers to Emymac, Debtor also has provided inconsistent numbers regarding her income and expenses. To date, it is unclear how much income Debtor receives from operating her businesses and how much she receives from renting her real properties. Finally, at least one of Debtor's creditors, Mr. Vafi, obtained a ruling by the state court indicating that Debtor misappropriated Mr. Vafi's funds. Two other creditors have filed complaints against Debtor for embezzlement, misappropriation and fraud. In light of the above, the UST has met its burden of proving, by a preponderance of the evidence, that the Court should appoint a chapter 11 trustee.

**III. CONCLUSION**

The Court will grant the Motion and order the appointment of a chapter 11 trustee.

The UST must submit an order within seven (7) days.

**FOOTNOTES**

1. Less than one month prior to Debtor's execution of the promissory notes, the state court issued a tentative ruling awarding Mr. Vafi \$1,164,780.28. Debtor's assertion that she owes Emymac an amount that is almost identical to what she owes Mr. Vafi raises questions that are appropriately investigated by a chapter 11 trustee.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**1:13-17080 Randy Jay Ramirez and Hermilo Hernandez**

**Chapter 7**

**#8.00** Motion by Chapter 7 Trustee for Order: (1) Authorizing Sale of Real Property of the Estate; (2) Confirming Sale to Third Party or the Highest Bidder Appearing at Hearing; (3) Determining that Buyer is Entitled to 11 U.S.C. §363(m) Protection; and (4) Waiving the 14 Day Stay Under Rule 6004

Docket 204

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Randy Jay Ramirez

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
David Seror  
Jessica L Bagdanov  
Reed Bernet

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12887 Shigenori Yoshida and Keiko Yoshida**

**Chapter 7**

**#9.00** Motion for order authorizing Trustee to sell real property free and clear of liens, subject to overbid

Docket 31

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Shigenori Yoshida

Represented By  
Irwin M Friedman

**Joint Debtor(s):**

Keiko Yoshida

Represented By  
Irwin M Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**1:11-10426 Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

**#10.00** Ex parte application to stay entry of Joseph M. Fahs' proposed order to permit Bonavida to secure a bond

Docket 2990

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On October 27, 2009, petitioning creditors Joseph Fahs, Steven Chapnick and Elizabeth Tagle filed an involuntary chapter 11 petition against Georges Marciano ("Debtor"). On December 28, 2010, the Court entered an Order for Relief [doc. 161]. Prepetition, Alain Bonavida had represented Mr. Fahs in a state court action against Debtor. Declaration of Alain V. Bonavida ("Bonavida Declaration") [doc. 2983], ¶ 2.

The Court set a claims bar date of May 15, 2012. To date, Mr. Bonavida has not filed a claim against the estate, nor has Debtor indicated that Mr. Bonavida has a claim against the estate. On May 16, 2013, David K. Gottlieb, as the chapter 11 trustee (the "Trustee"), filed a motion for an order approving a settlement agreement (the "Settlement Agreement") [docs. 2073, 2123] with Debtor, certain entities under Debtor's control and various third parties, including Mr. Fahs. On May 30, 2013, the Court entered an order approving the Settlement Agreement [doc. 2122]. Mr. Bonavida was not a party to the Settlement Agreement. In relevant part, the Settlement Agreement provided for a \$10 million distribution from the estate to Mr. Fahs. Settlement Agreement, p. 47.

On May 23, 2013, Alain Bonavida, Mr. Fahs' prior state court counsel, filed a notice of an attorneys' lien in this case (the "Notice of Lien") [doc. 2091]. On October 29, 2013, the Trustee filed a fourth amended chapter 11 plan of liquidation (the "Plan") [doc. 2413]. The Trustee had previously filed the related disclosure statement (the "Disclosure Statement") [doc. 2007]. On December 2, 2013, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 2471]. Neither the Plan nor the Disclosure Statement provides for any distribution to Mr. Bonavida. The Plan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

and the Disclosure Statement also do not refer to Mr. Bonavida as a holder of a claim against the estate.

After confirmation of the Plan, David K. Gottlieb, as plan administrator (the "Plan Administrator") routinely filed post-confirmation status reports (collectively, the "Status Reports") [docs.2749, 2855, 2915, 2944, 2966, 2970, 2976]. The Plan Administrator noted in the Status Reports that he was withholding 40% of the funds owed to Mr. Fahs based on a dispute between Mr. Bonavida and Mr. Fahs. Specifically, Mr. Bonavida asserted a lien against the funds owed to Mr. Fahs based on an alleged prepetition fee agreement between the parties. In the Status Report, the Plan Administrator repeatedly noted that he was attempting to obtain the parties' cooperation in interpleading the disputed funds to state court, where the parties were litigating their dispute. Apparently, the parties did not reach an agreement [doc. 2976].

On July 3, 2014, Mr. Bonavida filed a complaint against Mr. Fahs in state court. Declaration of David C. Wheeler ("Wheeler Declaration") [doc. 2979], ¶ 2. Mr. Bonavida dismissed this action before the case went to trial. Wheeler Declaration, ¶ 3. On April 21, 2017, Mr. Bonavida filed another complaint against Mr. Fahs. Wheeler Declaration, ¶ 4. On November 29, 2017, the Court entered a judgment in this action (the "State Court Judgment"), finding that Mr. Bonavida "shall recover nothing" from Mr. Fahs. Wheeler Declaration, ¶ 5, Exhibit 2. Mr. Bonavida appealed the State Court Judgment. Bonavida Declaration, ¶ 17.

On December 13, 2017, Mr. Fahs filed a motion for an order directing the disbursement of the reserve funds to Mr. Fahs (the "Disbursement Motion") [doc. 2979]. On December 28, 2017, Mr. Bonavida filed an opposition to the Motion [doc. 2983]. On January 3, 2018, the Plan Administrator filed a response to the Motion [doc. 2985]. The Plan Administrator did not take sides, but noted that this is the last issue remaining before this case may be closed.

On January 11, 2018, the Court held a hearing on the Disbursement Motion. At that time, the Court issued a ruling granting the Disbursement Motion and instructing Mr. Fahs to submit a proposed order within seven days. On January 12, 2018, Mr. Fahs lodged a proposed order (the "Proposed Order") [doc. 2987]. On January 18, 2018, Mr. Bonavida opposed the Proposed Order [doc. 2988], asserting that the Court ruled

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

---

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.** Chapter 11

that Mr. Bonavida could post a bond to stay the Proposed Order. On the same day, Mr. Bonavida filed an ex parte application requestin a stay of the Proposed Order (the "Application") [doc. 2990] and an application for an order setting the hearing on the Application on shortened notice [doc. 2992]. In the Application, Mr. Bonavida requests an opportunity to post a bond in order to stay the Proposed Order.

On January 18, 2018, the Court entered an order setting the hearing on the Application on shortened notice (the "OST Order") [doc. 2995]. In the OST Order, the Court instructed any opposing party to file and serve an opposition no later than January 23, 2018 at 12:00 p.m.

On January 23, 2018, Mr. Fahs timely filed an opposition to the Application (the "Opposition") [doc. 3004]. In the Opposition, Mr. Fahs states that this Court does not have jurisdiction over the underlying dispute between the parties. On the same day, Mr. Fahs filed evidentiary objections to Mr. Bonavida's declaration attached to the Application [doc. 3005].

## II. ANALYSIS

### *A. The Court Will Approve Entry of the Proposed Order*

Mr. Bonavida's opposition to the Proposed Order provides that the Proposed Order should include language providing that the Proposed Order is stayed if Mr. Bonavida posts a bond. However, at the hearing on the Disbursement Motion, the Court did not state that the Proposed Order would only be entered if Mr. Bonavida did not post a bond. The Proposed Order will be entered in its current form. If Mr. Bonavida were entitled to post a bond, which he is not, the Court would enter a separate order staying the Proposed Order.

### *B. Mr. Bonavida Cannot Post a Bond as a Matter of Right under Federal Rule of Civil Procedure 62(d)*

As a preliminary matter, Mr. Fahs' arguments in the Opposition are inapposite. First, whether this Court has jurisdiction over the underlying dispute is not at issue in the Application. At the hearing on the Disbursement Motion, the Court ruled that this Court does not have jurisdiction over the underlying dispute between Mr. Fahs and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

Mr. Bonavida. In light of that, the Court held that Mr. Bonavida had not provided legal authority that would compel this Court to order the Plan Administrator to continue holding funds. However, the Court does have jurisdiction over its own orders, including regarding whether to order a stay of the Proposed Order. Mr. Fahs has not provided any legal basis that would prevent this Court from issuing a stay of one of its own orders. The Court will also not treat the Application as a motion for reconsideration. Mr. Bonavida is not asking the Court to reevaluate its decision on the Disbursement Motion. Mr. Bonavida is requesting a stay until he can appeal the Proposed Order. Nevertheless, Mr. Bonavida is not entitled to post a bond as a matter of right.

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 7062, Federal Rule of Civil Procedure ("FRCP") 62 applies in adversary proceedings. Pursuant to FRCP 62 (d), "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond.... The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond."

"The posting of a supersedeas bond under Rule 7062(d) in an amount approved by the court gives the [appellant] an absolute right to a stay pending appeal." *In re Byrd*, 172 B.R. 970, 974 (Bankr. W.D. Wash. 1994) (citing *In re Swift Aire Lines, Inc.*, 21 B.R. 12 (B.A.P. 9th Cir. 1982)). However, courts dispute which types of judgments or orders give rise to an absolute right to a stay pending appeal. FRCP 62(a) and 62(d) exempt only two types of orders or judgments from being subject to a stay pending appeal: (1) "an interlocutory or final judgment in an action for an injunction or a receivership;" and (2) "a judgment or order that directs an accounting in an action for patent infringement." FRCP 62(a)(1), (a)(2).

Nevertheless, courts have consistently stated that FRCP 62(d) "pertains primarily, if not exclusively, to monetary judgments." *In re Fullmer*, 323 B.R. 287, 291 (Bankr. D. Nev. 2005); *see also In re Capital West Investors*, 180 B.R. 240, 242–43 (N.D. Cal. 1995) (holding that a plan confirmation order did not qualify as a money judgment giving rise to a stay as a matter of right under FRCP 62(d)); *Government Guarantee Fund of Finland v. Hyatt Corp.*, 167 F.R.D. 399, 400 (D. Va. 1996) (same as to an injunction order). "The Seventh and Ninth Circuits have given clear effect to the limitation (of the stay of right to appeals from money judgments)...." *Capital West*, 180 B.R. at 242–43; *see also National Labor Relations Board v. Westphal*, 859 F.2d

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

818, 819 (9th Cir. 1988) (appeal from an order directing subpoena compliance).

There appears to be no bright line rule regarding which orders or judgments count as "money judgments" for purposes of FRCP 62(d). The Bankruptcy Appellate Panel of the Ninth Circuit has held that FRCP 62(d) applies to money judgments "from which a writ of execution can issue." *Swift Aire Lines*, 21 B.R. at 13-14; *In re Wymer*, 5 B.R. 802, 804 (B.A.P. 9th Cir. 1980).

Most other cases do not include the specific language regarding writs of execution. In *Capital West*, the court summarized the general approach of courts as follows: "When an appeal is taken from a judgment that is not a money judgment or an exception of Rule 62(a) within the strict meaning of those terms, but is comparable to one or the other of these judgments, most of the few courts that have addressed the issue appear (for purposes for Rule 62) to treat that judgment like the judgment to which it is comparable." *Capital West*, 180 B.R. at 243. Under this reasoning, the relevant question is whether the Proposed Order is comparable to a money judgment or to an action for an injunction.

Although there are no cases with facts exactly similar to the facts here, there are several analogous cases within this circuit. For instance, in *In re Hatten*, 2012 WL 1205865, at \*1 (Bankr. D. Alaska Apr. 10, 2010), the bankruptcy court held that a judgment authorizing a trustee to disburse funds in the bankruptcy estate in accordance with 11 U.S.C. § 726 is not a money judgment. The bankruptcy court did not provide any reasoning for this holding, but the judgment authorizing distribution is the most analogous order to the Proposed Order.

In addition, in *In re Commercial Money Ctr., Inc.*, 2005 WL 6479803, at \*3 (Bankr. S.D. Cal. Aug. 1, 2005), the bankruptcy court found that a turnover portion of a judgment, which required turnover of bonds and other collateral, was more analogous to a mandatory injunction than to a money judgment. Other courts have also held that turnover orders are more similar to mandatory injunctions than to money judgments. See, e.g., *Diaz-Barbra v. Kismet Acquisition, LLC*, 2008 WL 4093802, at \*2 (S.D. Cal. Sep. 3, 2008) (holding that turnover of real property is not equivalent to a money judgment); *In re Great Western Coal, Inc.*, 146 B.R. 702, 704 (Bankr. S.D. Tex. 1992) (holding that an order for turnover of funds in the court's registry was not a money judgment); and *In re Wildlife Center, Inc.*, 102 B.R. 321, 322 (Bankr. E.D.N.Y. 1989)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

**CONT...**      **Georges Marciano and Beverly Hills Antiques, Inc.**      **Chapter 11**  
(holding that order requiring turnover of stallion certificate similar to an injunction).

Under these authorities, the Proposed Order is more comparable to a mandatory injunction (ordering the Plan Administrator to do something) than a money judgment. *See* Mandatory Injunction, Black's Law Dictionary (10th ed. 2014) (defining "mandatory injunction" as "[a]n injunction that orders an affirmative act or mandates a specified course of conduct"). The Proposed Order does not award Mr. Fahs any money. That amount had already been awarded to Mr. Fahs pursuant to the Settlement Agreement. Instead, the Proposed Order merely instructs the Plan Administrator to release the funds to Mr. Fahs.

Moreover, in *Capital West*, the court provided a detailed analysis of why a plan confirmation order did not qualify as a "money judgment" for purposes of FRCP 62 (d). *Capital West*, 180 B.R. at 241-45. In relevant part, the court found:

Where, like the typical order of confirmation in bankruptcy, an order makes multiple provisions, e.g., for both injunctive and monetary relief, the Court may (or may be required to) stay execution of the order as to some of its provisions but not others. *See* 11 Wright & Miller § 2905, at 325-26 (indicating that "[i]f a judgment includes both a money award and the grant or denial of an injunction, a supersedeas stays the money award but not that the part of the judgment that deals with injunctive relief"). Thus, a portion of the Order comparable to a money judgment may be subject to a stay as a matter of right, whereas a portion comparable to an injunction may not be subject to a stay at all.

Whatever the merits of such an approach in the ordinary case, separate analysis of the components of an order is inappropriate in analyzing a bankruptcy order confirming a plan of reorganization. Unlike the components of a garden-variety order, the components of an order confirming a plan of reorganization are interdependent. While execution on one component of a garden-variety order can generally be stayed pending appeal without affecting those components that are not stayed, the same is not true of an order confirming a plan of reorganization in bankruptcy.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

CONT...

**Georges Marciano and Beverly Hills Antiques, Inc.**

**Chapter 11**

...

Whether or not more like the one than the other, an order confirming a plan of reorganization, taken as an aggregate of its components, however multi-varied, is not comparable to a money judgment or a judgment in an action for an injunction or receivership, or an order directing an accounting in an action for infringement of letters of patent. An order confirming a Chapter 11 plan simply represents the court's determination that the plan passes muster under 11 U.S.C. § 1129, e.g., that the plan is fair and equitable, does not unfairly discriminate, and is not proposed by any means forbidden by law.

*Id.*, at 244–45. Here, the Proposed Order instructed the Plan Administrator to release funds in accordance with the Plan. It would be incongruous to deem the Proposed Order a "money judgment" if the Confirmation Order giving rise to the Proposed Order would not be considered a money judgment. Because the Proposed Order is not a "money judgment" as that phrase is defined in this circuit, Mr. Bonavida does not have a right to an automatic stay of the Proposed Order pursuant to FRCP 62(d).

***C. Mr. Bonavida is Also Not Entitled to a Discretionary Stay Pending Appeal***

Pursuant to FRBP 8007(a)(1)(A), "[o]rdinarily, a party must move first in the bankruptcy court for...a stay of judgement, order, or decree of the bankruptcy court pending appeal."

"A court has considerable discretion when determining whether to issue a stay pending appeal." *In re GGW Brands, LLC*, 2013 WL 6906375, at \*10 (Bankr. C.D. Cal Nov. 15, 2013) (citing to *Nken v. Holder*, 556 U.S. 418, 433-34, 129 S.Ct. 1749, 1761, 173 L.Ed.2d 550 (2009)). "Although the decision whether to stay proceedings is dependent on the circumstances of the particular case, '[a] discretionary stay should be sparingly employed and reserved for the exceptional situation.'" *GGW Brands*, at \*10 (citing *In re O'Kelley*, 2010 WL 3984666, at \*4 (D. Haw. 2010)). The party requesting a stay { "pageset": "S63 bears the burden of "showing that the circumstances justify an exercise of that discretion." *Nken*, at 556 U.S. at 433-34.

The court considers four factors when determining whether to issue a stay pending

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

Chapter 11

appeal:

1. Whether the stay applicant has a made a strong showing that he is likely to succeed on the merits
2. Whether the applicant will be irreparably harmed
3. Whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. Where the public interest lies

*Id.*, at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); see also *In re N. Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008)

The four factors may be weighed in a sliding scale, "where a stronger showing of one element may offset a weaker showing of another" *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

***1. Whether Mr. Bonavida is Likely to Succeed on the Merits***

"While it is not necessary for [movant] to show that it is more likely than not that it will win on the merits, 'at a minimum' the petitioner must show that there is a 'substantial case for relief on the merits.'" *In re Blixseth*, 509 B.R. 701, 706 (Bankr. D. Mont. 2014) (quoting *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012)). "[I]t is not enough that the likelihood of success on the merits is 'better than negligible' or that there is a 'mere possibility of relief.'" *Lair*, 697 F.3d at 1204 (quoting *Nken*, 556 U.S. at 434).

Mr. Bonavida has not demonstrated that he is likely to succeed on an appeal of the Proposed Order. In arguing against the Distribution Motion, Mr. Bonavida did not cite any legal authority that would compel this Court to order the Plan Administrator to hold the subject funds despite the language in the Plan and the Settlement Agreement mandating distribution to Mr. Fahs. Without such authority, the Court was bound to order the parties to comply with the requirements of the Plan and the Settlement Agreement. Mr. Bonavida does not address the likelihood of his success on appeal in the Application. Consequently, this factor weighs against staying the Proposed Order.

***2. Whether Mr. Bonavida Will Be Irreparably Harmed***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

Chapter 11

Following the Supreme Court’s ruling in *Nken*, the Ninth Circuit Court of Appeals held that the movant has a higher burden regarding the second factor, irreparable injury. *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011). In *Leiva-Perez*, the Ninth Circuit explained that “on a stay application, a court often cannot reasonably determine whether the petitioner is more likely than not to win on the merits, but typically it is easier to anticipate what would happen as a practical matter following the denial of a stay.” *Id.*

As a threshold requirement, the movant must always show that irreparable harm is probable. *Id.*, at 965 (It is a “bedrock requirement that stays must be denied to all petitioners who did not meet the applicable irreparable harm threshold, regardless of their showing on the other stay factors.”). Conversely, however, “even certainty of irreparable harm has never *entitled* one to a stay.” *Id.* (emphasis in original).

Mr. Bonavida asserts that he will be irreparably harmed by the distribution to Mr. Fahs because Mr. Fahs will immediately incur a tax liability amounting to 50% of the funds and because Mr. Fahs will dissipate the funds. As to the tax liability, Mr. Bonavida provides no legal authority that Mr. Fahs would have to pay 50% of the funds in taxes. In addition, Mr. Bonavida does not demonstrate that he would not incur the same tax liability if the funds are eventually distributed to Mr. Bonavida. As such, Mr. Bonavida has not shown irreparable harm based on tax liability.

Regarding Mr. Bonavida’s assertion that Mr. Fahs will dissipate the funds, the Court cannot speculate as to whether or how Mr. Fahs will use the funds. Even if Mr. Fahs spends the funds, there is no evidence that Mr. Fahs would not be able to otherwise satisfy a judgment entered in favor of Mr. Bonavida. Thus, Mr. Bonavida has not demonstrated that he will be irreparably harmed without a stay.

***3. Whether the Stay Will Substantially Injure Other Parties***

A stay of the Proposed Order will substantially injure Mr. Fahs because it will further delay distribution that is owed to Mr. Fahs pursuant to the Plan. Here, the Court entered the Confirmation order in December 2013. Over four years has passed since that time, and Mr. Fahs has yet to receive the full distribution owed to him pursuant to the Plan. Moreover, a stay of the Proposed Order will further delay closure of this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

---

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

Chapter 11

case, and the Plan Administrator will continue to incur administrative fees. As such, a stay will substantially injure other parties.

**4. *Where the Public Interest Lies***

To the extent that the public interest factor is applicable, prompt administration is a “chief purpose” of the bankruptcy laws, and generally, the public interest weighs against a stay, and in favor of moving forward with the case. Fed. R. Bankr. P. 1001 (stating that the Federal Rules of Bankruptcy Procedure “shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding”); *Katchen v. Landy*, 382 U.S. 323, 328, 86 S.Ct. 467, 472, 15 L.Ed.2d 391 (1966) (“[T]his Court has long recognized that a chief purpose of the bankruptcy laws is ‘to secure a prompt and effectual administration and settlement of estate of all bankrupts within a limited period.’”); *Dynamic Fin. Corp. v. Kipperman*, 395 B.R. 113, 127 (S.D. Cal. 2008) (finding that the “public interest in speedy and accurate bankruptcy proceedings warrants denying the application for stay of the bankruptcy court’s Order”) (emphasis omitted); *In re Trident Shipworks, Inc.*, 243 B.R. 130 (Bankr. M.D. Fla. 1999) (noting the “well recognized principle” that requires an expeditious administration of bankruptcy estates); *In re Porter*, 54 B.R. 81, 82 (Bankr. D. Ok. 1985) (“[T]he public interest, though difficult to measure in a case involving primarily private rights, is generally served by moving forward.”); *In re GHR Cos.*, 41 B.R. 666, 668 (Bankr. D. Mass. 1984) (finding that a stay pending appeal would be contrary to the public interest because “creditors have a very strong interest in seeing that further delay is not encountered in what already have been protracted proceedings”).

Based on the authorities above, the public interest weighs in favor of "prompt administration" and closure of this case. The public has an interest in ensuring that creditors are paid without significant delay. Here, ordering a further stay of a distribution to a creditor pursuant to a confirmed plan would work against the public interest. Consequently, this factor also weighs in favor of denying Mr. Bonavida’s request for a stay of the Proposed Order.

**III. CONCLUSION**

The Court will enter the Proposed Order in its current form. The Court also will deny the Application.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

CONT... **Georges Marciano and Beverly Hills Antiques, Inc.**

Chapter 11

Mr. Fahs must submit a proposed order within seven (7) days.

Tentative ruling regarding Mr. Fahs' evidentiary objections to the identified paragraphs in the Declaration of Alain V. Bonavida:

paras. 4-5: sustain

**Party Information**

**Debtor(s):**

Georges Marciano

Represented By  
Michael E Reznick  
Michael C Heinrichs  
Jeremy V Richards  
Jonathan J Kim  
Robert Mockler  
Bernard R Given

Beverly Hills Antiques, Inc.

Represented By  
Jeremy V Richards  
Jeffrey L Kandel  
Jonathan J Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders  
Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Georges Marciano and Beverly Hills Antiques, Inc.**

James KT Hunter

Peter A Davidson

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, January 25, 2018

Hearing Room 301

2:00 PM

1:11-10426 Georges Marciano and Beverly Hills Antiques, Inc.

Chapter 11

#11.00 Opposition of Alain Bonavida to lodge order regarding Joseph Fahs' motion for order authorizing plan administrator to distribute to Fahs all amounts on his allowed proof of claim

Docket 2988

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Georges Marciano

Represented By  
Michael E Reznick  
Michael C Heinrichs  
Jeremy V Richards  
Jonathan J Kim  
Robert Mockler  
Bernard R Given

Beverly Hills Antiques, Inc.

Represented By  
Jeremy V Richards  
Jeffrey L Kandel  
Jonathan J Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders  
Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, January 25, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Georges Marciano and Beverly Hills Antiques, Inc.**

Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter  
Peter A Davidson

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:16-01080 Olde Wolbers et al v. Cazares

**#1.00** Trial re: complaint objecting to discharge  
[FOR RULING]

fr. 7/20/16; 9/14/16; 10/5/16; 10/19/16; 11/23/16; 12/21/16;  
6/14/2017; 6/21/17; 11/28/17; 11/29/17; 1/17/18

Docket 1

**Tentative Ruling:**

The Court will continue this matter to **February 14, 2018 at 2:30 p.m.**

Appearances on January 31, 2018 should not be made.

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

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Ian Landsberg

**Defendant(s):**

Dean Albert Maury Cazares

Pro Se

**Plaintiff(s):**

Christian Olde Wolbers

Represented By  
Larry Castruita

Raymond Herrera

Represented By  
Larry Castruita

**Trustee(s):**

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

9:30 AM

1:17-11024 Kevin C. Polito and April Dawn Underwood

Chapter 11

#1.00 Evidentiary hearing re: debtors' motion for order determining value of collateral with The Bank of New York Mellon (28917 Pacifica Court, Santa Clarita, CA 91390)

fr. 9/12/17(stip); 10/19/17 (stip); 11/16/17(stip)

**Stipulation filed 12/29/17**

Docket 42

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 12/29/17**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#2.00** Evidentiary hearing re: debtors' motion for order determining value of collateral with The Bank of New York Mellon

fr. 9/12/17(stip); 10/19/17 (stip); 11/16/17(stip); 12/14/17

Docket 43

**\*\*\* VACATED \*\*\* REASON: Order Approving Stip Entered on 1/10/18.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

1:30 PM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #3.00** Pre-trial conference re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17

**Order approving stip to continue entered 1/23/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Continued to 2/7/2018 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#4.00** Motion for summary judgment or summary adjudication

fr. 1/24/18

Docket 165

**Tentative Ruling:**

**I. BACKGROUND**

***A. The Whitman Project***

Darin Davis ("Defendant") was a developer of small real estate projects. Declaration of Darin Davis ("Davis Declaration") [doc. 189], ¶ 2. [FN1]. In 1998, Defendant and Stephen Bock formed D&S Development, LLC ("D&S Development") for the purpose of developing small real estate projects. Davis Declaration, ¶ 7. In 2001, D&S Development constructed homes on a project called the Yolanda Project. Davis Declaration, ¶ 8. The Yolanda Project was the first time Defendant built more than four homes in a single project. *Id.*

On August 30, 2002, Defendant and Mr. Bock also formed T.O. Ix, LLC ("T.O."). Davis Declaration, ¶ 2. Defendant and Mr. Bock created T.O. to develop nine single family residences at Whitman Court, in Thousand Oaks, California (the "Whitman Project"). *Id.* T.O. did not have a California general contractor's license. Davis Declaration, ¶ 3. However, from January 20, 1989 to January 31, 2015, Defendant had a personal California General Builder Contractor's license. *Id.* Relying on counsel, Defendant believed it was unnecessary for T.O. to have a contractor's license. Davis Declaration, ¶ 9.

In 2003, Defendant and an architect obtained the initial site building permits for the Whitman Project from the City of Thousand Oaks, California (the "City"). Davis Declaration, ¶ 10. The City listed either Defendant, D&S Development or T.O. as the Whitman Project contractor. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

***B. Plaintiff's Contract with Defendant***

On June 2, 2004, Asphalt Professionals, Inc. ("Plaintiff") signed a construction contract (the "2004 Agreement") with T.O. Davis Declaration, ¶ 5; Declaration of Ray B. Bowen ("Bowen Declaration") [doc. 165], ¶ 15; Declaration of Michael S. Poles ("Poles Declaration") [doc. 167], Exhibit 15, p. 2. [FN2]. Defendant, a member of T.O., signed the 2004 Agreement. Statement of Undisputed Fact ("SUF") [doc. 191] no. 3; Davis Declaration, ¶ 3. In the 2004 Agreement, T.O. was listed as the "owner/builder" of a new housing development project, i.e., the Whitman Project. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2. Plaintiff was the subcontractor that agreed to perform asphalt and concrete street improvement services for the Whitman Project. *Id.*

At the time T.O. and Plaintiff entered into the 2004 Agreement, Defendant did not disclose to certain employees of Plaintiff that T.O. was not licensed. Declaration of Matthew Ludlow, ¶ 5; Declaration of Tom Hodge, ¶ 5. Defendant also did not disclose to certain employees of Plaintiff that he was relying on a 33 year old as-built survey for the Whitman Project. Declaration of Matthew Ludlow, ¶ 8; Declaration of Tom Hodge, ¶ 7. The Ludlows and Mr. Hodge testified that, had Defendant disclosed that T.O. was not licensed or that Defendant was relying on a 33 year old as-built survey, Plaintiff would not have conducted business with T.O. Declaration of Jeffrey Ludlow, ¶¶ 6, 9-10; Declaration of Matthew Ludlow, ¶¶ 6, 9-10; Declaration of Tom Hodge, ¶¶ 6, 8-9.

***C. Citations against Defendant and His Entities***

In April 2004, the Contractors State License Board ("CSLB") responded to a complaint by a homeowner regarding a title issue on the Yolanda Project. Davis Declaration, ¶ 13. During the course of CSLB's investigation, Defendant first learned that he had to attach his personal contractor's license to the contracting entity when developing more than four homes. *Id.* [FN3]. On September 8, 2004, Defendant formed Fairland Construction, Inc. ("Fairland") to act as the management company for T.O. Davis Declaration, ¶ 15. However, Defendant was not able to associate his contractor's license to Fairland immediately; Fairland did not receive its license until May 19, 2005. Davis Declaration, ¶ 16.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

At that time, Defendant believed that he had remedied the licensing issue. *Id.* On May 21, 2005, T.O. entered into a construction management agreement with Fairland. *Id.* Neither Defendant nor Mr. Bock informed the City that Fairland was acting as the construction manager on the Whitman Project, nor did Defendant believe it was necessary to inform the City. Davis Declaration, ¶ 17.

In late 2004, another homeowner on the Yolanda Project complained to CSLB about D&S Development. Davis Declaration, ¶ 18. As a result, on January 31, 2005, CSLB issued a citation to T.O., noting the need for a contractor's license when constructing a project with more than four homes. *Id.* On April 27, 2005, D&S Development signed a stipulation to resolve the citation. Davis Declaration, ¶ 19. The stipulation required D&S Development to "disclose that [it] is not licensed by the [CSLB] by providing a Notice to Unlicensed Person to said purchaser." *Id.*

The City eventually inspected the Whitman Project on at least 10 occasions, issuing a Final Clearance for Occupancy on each of the nine homes in the Whitman Project. Davis Declaration, ¶ 11. According to Defendant, all of the homes on the Whitman Project were built entirely by qualified, licensed and insured subcontractors, and all of the required permits and plans were approved by the City. Davis Declaration, ¶ 6.

During construction on the Whitman Project, D and S Homes, Inc. ("D&S Homes"), a small corporation formed by Defendant and Stephen Bock, sent a number of modifications, or "change orders," to the 2004 Agreement to Plaintiff. *Id.* Defendant and Mr. Bock had been partners in the construction business from prior to 2003 until after 2005. *Id.*; SUF no. 7. In 2005, Defendant, Mr. Bock and Jose Leon owned 84% of D&S Homes. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2. D&S Homes, in turn, owned 60% of T.O. *Id.*

On August 11, 2005, D&S Homes gave notice to Plaintiff that it had violated provisions of the 2004 Agreement. *Id.*; SUF no. 15. In that letter, D&S Homes referred to the 2004 Agreement as "our contract," and notified Plaintiff that it had "no option... but to terminate" the 2004 Agreement. *Id.* The termination letter did not mention T.O. *Id.* The letter was signed by Defendant, as president of D&S Homes. *Id.*

***D. The State Court Action***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT... **Darin Davis**

**Chapter 7**

T.O. did not pay Plaintiff for all the work it performed on the Whitman Project. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2. As such, on September 29, 2005, Plaintiff sued T.O., Defendant and others in state court (the "State Court Action"), alleging breach of contract and foreclosure on a mechanic's lien. *Id.*; SUF no. 17; Defendant's MSJ's Statement of Uncontroverted Fact [doc. 176] no. 6. Plaintiff later amended the complaint, joining additional defendants to the action and adding causes of action for fraud, conspiracy and quantum meruit. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2; SUF no. 18.

In the operative complaint in the State Court Action, Plaintiff's breach of contract and fraud causes of action were based on the same facts. Request for Judicial Notice ("RJN") [doc. 164], Exhibit 2. One of Plaintiff's fraud counts from the State Court Action is based on Defendant's failure to pay Plaintiff the amount owed under the 2004 Agreement. RJN, Exhibit 2, pp. 12-14. The other fraud count is based on Defendant's failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the 2004 Agreement. RJN, Exhibit 2, pp. 14-15. In the operative complaint, Plaintiff requested specific damages based on Defendant's failure to pay Plaintiff under the 2004 Agreement. RJN, Exhibit 2, pp. 18-20. With respect to the fraud counts, Plaintiff requested "general damages" and punitive damages.

The trial court bifurcated the State Court Action into two trial phases. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2. The first phase involved Plaintiff's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. *Id.* In 2010, the trial court conducted a bench trial on the first phase. *Id.* On October 29, 2010, the trial court entered an interlocutory judgment as to the first phase of trial (the "Phase One Judgment"). Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 12. [FN4]. In relevant part, the Phase One Judgment reads:

The Court, after a bench trial on the Breach of Contract, Foreclosure of Mechanic's Lien and *Quantum Meruit* counts only, leaving the remaining Fraud and Deceit (Misrepresentation of Fact) count and the alter ego issues yet to be tried, made findings and orders as follows:

THE COURT FINDS:

The court finds: (a) plaintiff did everything it was supposed to do under

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

the contract; (b) plaintiff did nothing wrong in their dealings with the defendants; (c) even if the note on the plans was directed to plaintiff, plaintiff did what the note requested it to do; (d) plaintiff is entitled to foreclosure on the mechanic's lien in the amount as prayed; (e) plaintiff took the appropriate course of action when the problem arose, and that was to notify all involved that there was going to be a problem; (f) plaintiff was not at fault for laying approximately 130 linear feet of curb the way it was laid, so there is no offset for the demolition work that the subsequent asphalt contractor performed; (g) plaintiff made a proper demand for payment under the contract on August 11, 2005; (h) the withholding of payments due the plaintiff under the contract by defendants was not done in good faith; and (i) plaintiff is the prevailing party.

IT IS ORDERED, ADJUDGED AND DECREED that:

...

Judgment is granted in favor of plaintiff...and against... [T.O.] on the breach of contract, foreclosure on mechanic's lien and *quantum meruit* counts in the sum of \$79,831.18 principal and \$207.50 costs of recording the claims of lien on the foreclosure on mechanic's count, together with interest at the legal rate of 10 percent per year from and after August 11, 2005, for the additional amount of \$40,019.30 through October 11, 2010, and, thereafter, for the additional per diem amount of \$21.92.

Judgment is granted in favor of plaintiff...and against [T.O.] on the breach of contract count only in the additional statutory bad faith retention sum of two percent (2%) per month calculated on the sum of \$79,831.18, pursuant to sections 3260 and 3260.1 of the Civil Code, which shall accrue from and after August 11, 2005 for the additional amount of \$98,990.60 through October 11, 2010, and, thereafter, for the additional per diem amount of \$53.22.

Attorneys fees on the breach of contract count pursuant to section 1717 of the Civil Code and on the *quantum meruit* count pursuant to section

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

7108.5 of the Civil Code shall be reserved for plaintiff's motions for attorney fees and any such motions shall be and are without prejudice to plaintiff also filing subsequent motions for attorney fees and costs incurred after each hearing on each such motion.

Judgment is granted in favor of plaintiff...and against [T.O.] on the *quantum meruit* count for delay damages in the additional amount of \$98,990.60 through October 11, 2010, and, thereafter, for the additional per diem amount of \$53.22.

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 12. After entry of the Phase One Judgment, Plaintiff filed a motion for an award of attorneys' fees. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 13, p. 3. [FN5]. The trial court awarded Plaintiff \$1.65 million in attorneys' fees (the "Fee Award"), stating that the sum was for the reasonable value of services rendered to date. *Id.*

***E. The Appeal of the Fee Award***

T.O. appealed the Fee Award. *Id.* On appeal, T.O. argued that, in light of the bifurcation of the State Court Action, the trial court erred by awarding fees to Plaintiff without apportioning counsel's work on the contract cause of action from the work on the other issues in the State Court Action. *Id.* Plaintiff argued that apportionment was not appropriate because the trial court could reasonably find that the contract and fraud issues were "intextricably intertwined." Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 13, p. 4. The appellate court agreed with Plaintiff. *Id.* In relevant part, the appellate court found:

Here the trial court found that the various causes of action were based on proof of underlying transactional facts. It said [Plaintiff] was "the prevailing party on the core issue in this case—the contract work that [it] performed for the developer in this case...."

There is a connection between the contract and fraud issues and [Plaintiff's] services. [Plaintiff] claimed [T.O.'s] promises and false representations induced it to sign the agreement and perform its services. [T.O.] has not shown why the trial court could not reasonably

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

find that [Plaintiff's] counsel properly worked on these closely connected issues together instead of segregating the pretrial work. The court did not decide the fraud issues at this trial, but that does not mandate a different result.

...

[T.O.] suggests that the trial court erred by considering claims for fees on fraud and alter ego issues. It notes these issues will be decided in the second phase of the bifurcated trial. But the court was not deciding future attorney's fees. It was only awarding fees for the work performed up to and including the judgment on the first trial. The court found that the services that were compensated were reasonably incurred "in order for plaintiff to prevail upon the counts adjudicated."

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 13, pp. 4-6. The appellate court upheld the Fee Award. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 13, p. 12.

***F. The Alter Ego Trial***

The second phase of trial was to involve Plaintiff's fraud and alter ego claims. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 2. Apparently, the court first decided the alter ego claims without addressing Plaintiff's fraud claims. Bowen Declaration, ¶ 15; Poles Declaration, Exhibits 14-15. On December 23, 2011, the state court issued a statement of decision after phase two of trial (the "Phase Two Decision"). Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 14. In relevant part, the Phase Two Decision reads:

Defendant [T.O.] failed to disclose to [Plaintiff] the entities that were actually involved in the construction contract;

Defendant [T.O.] failed to disclose to [Plaintiff] that it was not a licensed contractor and has never been a licensed contractor;

[Defendant, Mr. Bock and Mr. Leon] have interlocking control over the defendant entities of [T.O.], [D&S Homes], [D&S Development]

....

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

Defendant entities [T.O.], [D&S Homes], [D&S Development]...were undercapitalized;

Defendant entities [T.O.], [D&S Homes], [D&S Development]...were functionally incapacitated;

[Defendant, Mr. Bock and Mr. Leon] have direct control over the defendant entities of [T.O.], [D&S Homes], [D&S Development]....

[Defendant, Mr. Bock and Mr. Leon] have a pattern of using LLC's and corporations as temporary entities including the defendant entities of [T.O.], [D&S Homes], [D&S Development]....

The employees of the entities controlled by [Defendant, Mr. Bock and Mr. Leon] were being used interchangeably including the defendant entities of [T.O.], [D&S Homes], [D&S Development]....

The entities controlled by [Defendant, Mr. Bock and Mr. Leon], by utilizing the same accounting/bookkeeping personnel, lacked independent financial accountability including the defendant entities of [T.O.], [D&S Homes], [D&S Development]....

[Defendant, Mr. Bock and Mr. Leon], in a manner inconsistent with accepted arm's length corporate practices, used the assets from the entities they controlled for their own personal benefit including the assets of the defendant entities [T.O.], [D&S Homes], [D&S Development]....

Because [Defendant, Mr. Bock and Mr. Leon] did not treat the entities they controlled as separate from themselves and their other entity defendants, the Court cannot treat them as separate entities including the defendant entities of [T.O.], [D&S Homes], [D&S Development]

....

...



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

There is such a unity of interest and ownership that the separateness of [T.O.], [D&S Homes], [D&S Development] and [Defendant, Mr. Bock and Mr. Leon, among others]... has ceased;

Adherence to the separate existence of defendants [D&S Homes], [D&S Development] and [Defendant, Mr. Bock and Mr. Leon, among others], would, under the particular circumstances of this case, sanction a fraud or promote injustice; that is, if the acts are treated as those of [T.O.] alone, an inequitable result will follow;

Defendants [D&S Homes], [D&S Development] and [Defendant, Mr. Bock and Mr. Leon, among others], are each the alter ego of [T.O.].

The liability of the [Phase One Judgment] and the [Fee Award] and any other or future order or orders awarding damages, punitive damages, attorneys fees and/or costs to [Plaintiff] against [T.O.] in this case hereby is and will be extended to defendants [D&S Homes], [D&S Development], [Defendant, Mr. Bock and Mr. Leon]... jointly and severally, based upon the doctrine of *alter ego*;

Each of the following defendants: [D&S Homes], [D&S Development], [Defendant, Mr. Bock and Mr. Leon], hereby is jointly and severally liable with [T.O.] in this case.

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 14. In the Phase Two Decision, the state court also made findings regarding certain entities. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 14, pp. 7-8. As to T.O., the state court found:

A single venture "shell." [Mr.] Bock and [Defendant] admit that the LLC is used to protect assets of related entities. [Mr.] Bock [and Defendant]... admit that the LLC sold all assets and distributed all revenue to investors, in spite of the pending litigation by plaintiff. All who had dealings with [T.O.], including [the City] and plaintiff, understood that [T.O.], [D&S Homes], [D&S Development] and [Defendant] were used by defendants interchangeably. Further, this company (1) used the same offices and business locations as the other

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

entities related [D&S Homes], (2) commingled its assets with those of the other related entities, (3) had no regard for legal formalities and failed to maintain an arms' length relationship among related business entities, and (4) used its business form as a subterfuge for an illegal transaction, to wit, contracting without a license.

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 14, p. 7. As to D&S Homes, the state court found:

The parent corporation or "Mother Ship." Once [D&S Development] was cited, fined, and censured by and stipulated with [CSLB] for contracting without a license, [D&S Homes] became the vehicle that owned, controlled, and manipulated the other business organizations.... From approximately 2004 until the present, literally millions of dollars have been transferred into and out of [D&S Homes] without documentation. Further, this company (1) used the same offices and business locations as the other entities related [to D&S Homes], (2) commingled its assets with those of the other related entities, (3) had no regard for legal formalities and failed to maintain an arms' length relationship among related business entities, and (4) used its business form as a subterfuge for an illegal transaction, to wit, contracting without a license.

*Id.* As to D&S Development, the state court said:

Initially, [D&S Development] was the vehicle that owned, controlled, and manipulated the other related business organizations. [D&S Development] represented itself as the project developer of the various D&S projects. [Mr.] Bock and [Defendant] used the personal contractor's license of [Defendant] to pull permits and obtain entitlements to proceed with the LLC projects. Once permits and entitlements were obtained, [D&S Development] represented that it was an "owner/builder" and was not bound by the contractor license laws. [D&S Development] was also used interchangeably with [T.O.], [D&S Homes] and [Defendant]. After [D&S Development] was cited, fined, and censured by and stipulated with [CSLB] for contracting

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

without a license, [D&S Homes] became the vehicle that owned, controlled, and manipulated the other related business entities. Further, this company (1) used the same offices and business locations as the other entities related [to D&S Homes], (2) commingled its assets with those of the other related entities, (3) had no regard for legal formalities and failed to maintain an arms' length relationship among related business entities, and (4) used its business form as a subterfuge for an illegal transaction, to wit, contracting without a license.

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 14, p. 8. Finally, as to Defendant, the state court found:

[Defendant] represented himself to be an experienced builder with a general contractor's license. Once [D&S Development] was cited, fined, and censured by and stipulated with [CSLB] for contracting without a license, [Defendant] formed [Fairland], and in 2005 obtained a general contractor's license. [Defendant] and [Mr.] Bock admit that Fairland was formed to satisfy the demands of the [CSLB] and in order to comply with the contractor license laws. [Defendant] admits that after Fairland was formed and licensed "nothing changed." [Defendant] and [Mr.] Bock continued to build as "owner/builder," notified no one of the formation or licensure of Fairland, and continued to contract with the personal contractor's license of [Defendant]. Fairland was used solely as a vehicle to receive [Defendant's] portion of revenue generated by his admitted "partnership" with [Mr.] Bock and [Mr.] Leon, and then pay the personal obligations of [Defendant] and his wife Carolyn Davis, who was neither an owner nor an employee of Fairland.

*Id.* The state court entered a judgment conforming to the Phase Two Decision (the "Phase Two Judgment"). Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 17.

***G. The Appeal of the Phase Two Judgment***

Defendant appealed the Phase Two Judgment. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15. The appellate court upheld the Phase Two Judgment, except as against two defendants not involved in this adversary proceeding. Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 1. Specifically, the appellate court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**     **Darin Davis**  
found:

**Chapter 7**

We conclude, among other things, that: 1) substantial evidence supports the findings that appellants, with the exception of Regina Leon and the Leon Family Trust, are alter egos of [T.O.]; and 2) appellants have not shown that they timely and properly raised a defense at trial based on their claim that an exculpatory provision in a [T.O.] contract precludes alter ego liability.

Bowen Declaration, ¶ 15; Poles Declaration, Exhibit 15, p. 1.

***H. The Bustamante Lawsuit***

On April 18, 2008, Edmundo Bustamante and Tiffany Bustamante (the "Bustamantes") filed a complaint against Defendant, T.O., D&S Homes, D&S Development and other entities (the "Bustamante Lawsuit"). RJN, Exhibit 3. The Bustamantes were also represented by Mr. Bowen, Plaintiff's counsel. *Id.*

In their complaint, the Bustamantes alleged that, in September 2005, the Bustamantes purchased real property from T.O., D&S Homes and D&S Development. The Bustamantes further alleged that these entities, through Defendant, Mr. Bock and others, falsely represented to the City that T.O., D&S Homes and D&S Development were licensed. The Bustamantes alleged that the defendants had a duty to disclose that T.O., D&S Homes and D&S Development were unlicensed because the Bustamantes were purchasers of the subject real property and would not have purchased the subject property had they known that the entities were unlicensed.

On the same day the Bustamantes initiated the Bustamante Lawsuit, the Bustamantes filed a Notice of Related Case. RJN, Exhibit 4. In the Notice of Related Case, the Bustamantes indicated that the Bustamante Lawsuit was related to the State Court Action. *Id.* The Bustamantes also checked the boxes on the form Notice of Related Case indicating that the Bustamante Lawsuit: "involves the same parties and is based on the same or similar claims;" "arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact;" "involves claims against, title to, possession of, or damages to the same property;" and "is likely for other reasons to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT... **Darin Davis**

Chapter 7

require substantial duplication of judicial resources if heard by different judges." *Id.*

The Bustamantes and the defendants in the Bustamante Lawsuit attended arbitration. RJN, Exhibit 5. On October 13, 2011, the arbitrator entered an award in favor of the defendants (the "Bustamante Award"). *Id.* In the Bustamante Award, the arbitrator found that the Bustamantes had not proven a case for "indirect misrepresentation" based on the Bustamantes' allegations that they relied on representations made to the *City*. The arbitrator further found that Defendant did not have a duty to disclose T.O.'s (or other entities') unlicensed status to *purchasers* of the real property.

***I. Defendant's Satisfaction of Judgments***

On June 26, 2013, Plaintiff filed an Acknowledgment of Satisfaction of Judgment (the "Satisfaction of Judgment") in state court. RJN, Exhibit 13. Through the Satisfaction of Judgment and the stipulation attached thereto, Plaintiff acknowledged that the Phase One Judgment and any attorneys' fees incurred litigating the first two phases of trial had been paid in full. *Id.* The Satisfaction of Judgment included an explicit release of Defendant. *Id.*

***J. Defendant's Bankruptcy Case***

On June 15, 2010, Defendant filed a voluntary chapter 7 petition. On January 12, 2011, Plaintiff filed a claim against the estate, asserting an unsecured claim in the amount of \$3 million (the "Claim"). The proof of claim was signed by Plaintiff's counsel, Mr. Bowen. Mr. Bowen did not attach any documentation or analysis in support of Plaintiff's claim. Rather, in the proof of claim, Mr. Bowen noted that the damages were based on litigation in state court.

On September 17, 2014, Defendant filed an objection to the Claim (the "Objection to Claim") [Bankruptcy Docket, doc. 89]. In the Objection to Claim, Defendant asserted that Defendant had paid the total \$1,869,048.05 owed to Plaintiff pursuant to the Phase One Judgment and the Phase Two Judgment. Defendant also noted that Plaintiff had not provided evidence regarding any remaining damages.

On October 2, 2014, Plaintiff filed an opposition to the Objection to Claim [Bankruptcy Docket, doc. 95], arguing that the state court had not yet tried Plaintiff's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

fraud cause of action and that Plaintiff may obtain an additional award of damages after that trial. [FN6]. Plaintiff did not attach any evidence supporting its claim to its opposition to the Objection to Claim; instead, Plaintiff attached a string of status reports filed in this adversary proceeding in which the parties acknowledged that the parties were awaiting completion of the state court fraud action. On October 30, 2014, the Court held a hearing on the Objection to Claim. On November 20, 2014, the Court entered an order disallowing \$1,869,048.05 of Plaintiff's claim because that portion of the claim had already been paid (the "Claim Order") [Bankruptcy Docket, doc. 101].

As to the remaining \$1,130,951.42, the Court found that this amount "is allowed... pending the outcome of [the fraud phase of the State Court Action], presently pending in the Superior Court of the State of California for the County of Ventura." (emphasis added). The Court never decided whether Plaintiff was entitled to the remaining \$1,130,951.42. In fact, the Court *could not* calculate any such number because Plaintiff did not provide the Court with any evidence of outstanding damages. The Court merely refrained from deciding whether to disallow the remaining portion of Plaintiff's claim until the State Court Action concluded.

***K. The Adversary Proceeding***

On August 16, 2010, Plaintiff filed a complaint against Defendant, objecting to Defendant's discharge pursuant to 11 U.S.C. §§ 727(a)(2) and (a)(4) and requesting nondischargeability of any debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A). The Court bifurcated this proceeding, such that the Court first heard Plaintiff's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on Plaintiff's claims under 11 U.S.C. § 727 [doc. 113].

The Court initially stayed this adversary proceeding to await conclusion of the State Court Action. On April 19, 2017, Plaintiff and Defendant appeared for a status conference, at which time the Court informed the parties that it would no longer delay prosecution of this adversary proceeding until the State Court Action was resolved. The Court subsequently set a pretrial conference and instructed the parties to file a joint pretrial stipulation.

On October 4, 2017, the parties appeared at a continued pretrial conference. At that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

time, the Court informed the parties that they could file motions for summary judgment before trial. On October 13, 2017, the Court entered an order instructing the parties to file and serve their motions for summary judgment no later than November 6, 2017 [doc. 156].

On November 6, 2017, Plaintiff timely filed its motion for summary judgment ("Plaintiff's MSJ") [doc. 165]. Through Plaintiff's MSJ, Plaintiff requested the Court enter judgment in its favor on Plaintiff's § 523(a)(2)(A) claim based on: (A) Defendant's failure to disclose that T.O. was unlicensed; (B) Defendant's failure to disclose that Defendant relied on an as-built survey; and (C) Defendant's alleged manipulation of the construction drawings to appear as though a recent survey had been performed. To prove its damages, Plaintiff referred to the Claim Order, asserting that the Claim Order established that Plaintiff was damaged in the amount of \$1,130,951.42.

On the same day, Defendant timely filed its motion for summary judgment ("Defendant's MSJ") [doc. 162]. Through Defendant's MSJ, Defendant requested the Court enter judgment in its favor on the following bases: (A) the Bustamante Lawsuit precludes this Court's litigation of the issues in this adversary proceeding; and (B) all of Plaintiff's damages have been paid and Plaintiff cannot establish additional damages related to its fraud cause of action. Defendant opposes Plaintiff's MSJ [doc. 188] and Plaintiff opposes Defendant's MSJ [doc. 175].

## **II. ANALYSIS**

### **A. *General Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247–48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

**B. Burden of Proof**

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523 (a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

**C. Issue Preclusion**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245).

***1. Whether the Bustamante Award Precludes this Action***

In Defendant's MSJ, Defendant asserts that he is entitled to summary judgment based on the Bustamante Award.

Defendant first states that the issue sought to be precluded from relitigation is identical to the issues from the Bustamante Lawsuit. In their complaint, the Bustamantes alleged that, in September 2005, the Bustamantes purchased real property from T.O., D&S Homes and D&S Development. The Bustamantes further alleged that these entities, through Defendant, Mr. Bock and others, falsely represented to the City that T.O., D&S Homes and D&S Development were licensed. The Bustamantes alleged that the defendants had a duty to disclose that T.O., D&S Homes and D&S Development were unlicensed because the Bustamantes *were purchasers of the subject real property and would not have purchased the subject property* had they known that the entities were unlicensed.

In the Bustamante Award, the arbitrator found that the Bustamantes had not proven a case for "indirect misrepresentation" based on the Bustamantes' allegations that they relied on representations made to the *City*. The arbitrator further found that Defendant did not have a duty to disclose T.O.'s (or other entities') unlicensed status to *purchasers* of the real property.

These issues from the Bustamante Lawsuit are not identical to the issues here. First, this adversary proceeding does not involve "indirect misrepresentations" to the City. The Complaint and Plaintiff's MSJ both request a finding of fraud based on alleged representations or omissions made directly to *Plaintiff*. Further, the fraud issue in the Bustamante Lawsuit involved whether a general contractor had a duty to disclose its unlicensed status to a *purchaser* of real property, not to a subcontractor involved with the building of that property. Based on this fact, the Bustamantes were in a different position than Plaintiff. In addition, the subject purchase agreement with T.O. was executed long after the 2004 Agreement involving Plaintiff. As such, the Bustamante Lawsuit did not involve the same transaction at issue here, nor did that lawsuit involve the same legal issues. Consequently, the Court cannot find that the issues in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Bustamante Lawsuit were identical to the issues here.

Moreover, the Bustamantes are not in privity with Plaintiff. Defendant asserts that the parties are in privity because Plaintiff's agents worked with the Bustamantes' legal counsel to litigate against Defendant. Defendant also relies on the Notice of Related Case filed by the Bustamantes' attorney. First, as to the Notice of Related Case, Defendant has not provided any authority that stands for the proposition that a party can create legal privity simply by filing a notice that two cases are related.

Defendant also asserts that, because the Ludlows aided the Bustamantes in their litigation against Plaintiff, and because both parties were represented by Mr. Bowen, the two actions were sufficiently close to warrant a finding of privity. The cases cited by Defendant do not compel this result.

Defendant first cites *Rodgers v. Sargent Controls & Aerospace*, 136 Cal.App.4th 82 (Ct. App. 2006). In *Rodgers*, the plaintiff sued the defendant entity for exposure to asbestos. *Rodgers*, 136 Cal.App.4th at 86. However, the defendant had previously been sued by other plaintiffs alleging asbestos exposure, and the courts presiding over those actions found that the defendant was not subject to successor liability based on its predecessor entity's actions. *Id.*, at 89-92. Part of the *Rodgers* opinion rested on policy; the appellate court found that imposing issue preclusion "would further the cognizable interests of avoiding harassment of [the defendant] with repeated litigation, reducing the possibility of inconsistent judgments, and promoting judicial economy." *Id.*, at 91-92. There, several plaintiffs were attempting to impose successor liability on the defendant despite the fact that a court had already held that successor liability did not apply to that defendant as concerns asbestos litigation. *Id.*

The same concerns are not present here. The issues in the Bustamante Lawsuit are different from the issues presented in this proceeding. There has been no repeated harassment of Defendant based on an identical issue that has been conclusively decided by another court. In addition, regarding the fact that Mr. Bowen represented both the Bustamantes and Plaintiff, the *Rodgers* court explicitly held that: "We also conclude that representation of different plaintiffs in different cases by the same attorneys is not a factor that justifies imposition of collateral estoppel to preclude litigation of an issue by appellant as a non-party to the prior actions, *at least without evidence that through his attorney he participated in or controlled the adjudication of*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

*the issue sought to be relitigated."* *Id.*, at 93 (emphasis added). "To find that an identity of attorneys presenting the same issue on behalf of different parties results in issue preclusion would promote attorney shopping, and tend to prevent parties from obtaining representation by chosen counsel familiar with an issue or matter in litigation." *Id.*, at 93-94.

Defendant has not presented sufficient evidence to show that Plaintiff was controlling the Bustamante Lawsuit through Mr. Bowen. That the Ludlows attended certain hearings or aided the Bustamantes with their lawsuit does not rise to the level of control. Plaintiff should not be barred from its choice of counsel, an attorney who is familiar with the defendants and subject real properties, by application of issue preclusion, especially where the issues in this proceeding are not identical to the issues in the Bustamante Lawsuit.

The next case cited by Defendant is *Garcia v. Rehrig Int'l, Inc.*, 99 Cal.App.4th 869 (Ct. App. 2002). In *Garcia*, the issue was whether a five year old child was in privity with his parents based on a prior action where the parents sued the defendant for their own injuries arising from the same incident. *Garcia*, 99 Cal.App.4th at 878. There, the court found privity, noting that: "We daresay that a five-year-old child (the child's age at the time of the first trial) ordinarily has no cognizable independent interest in relitigating a liability claim that has been determined adversely to his parents." *Id.* The parties here are not in the same position as a child with his parents, nor were the parties here injured in the same incident. As such, *Garcia* also does not help Defendant's argument regarding privity.

"The concept of privity for the purposes of ... collateral estoppel refers to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is sufficiently close so as to justify application of the doctrine of collateral estoppel." *Rodgers*, 136 Cal.App.4th at 90-91.

The Bustamante Lawsuit did not involve the same rights of property or a "mutual or successive relationship." The Court also cannot find that the Bustamantes and Plaintiff had a relationship "sufficiently close" so as to justify applying issue preclusion. The Bustamantes and Plaintiff happen to be suing the same defendants,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

but the parties are suing the defendants on different theories and there is no other connection between the parties.

In light of the above, Defendant has not shown that the issues in this proceeding are identical to the issues in the Bustamante Lawsuit, or that the parties are in privity. As such, the Court is not precluded by the Bustamante Award.

***2. Whether Any of the State Court Decisions Preclude this Action***

It is unclear from Plaintiff's MSJ if Plaintiff is attempting to use any of the state trial or appellate court decisions to preclude issues in this adversary proceeding. As both parties admit, the state court has not yet tried Plaintiff's fraud cause of action. Consequently, the issues before the state court were not identical to the issues before this Court.

To the extent that Plaintiff's expert, Mr. Poles, uses the state trial and appellate courts' decisions to conclude that Defendant had fraudulent intent in his dealings with Plaintiff, (1) Mr. Poles is not qualified to make such a determination; and (2) none of the state court opinions make findings regarding Defendant's intent.

In addition, the state courts' opinions are silent as to whether Defendant had a duty to disclose any of the omissions raised by Plaintiff. The closest any of the decisions get to any of the issues is in the Phase Two Judgment, where the state trial court noted that T.O. "failed to disclose to [Plaintiff] that it was not a licensed contractor and has never been a licensed contractor." Poles Declaration, Exhibit 14, p. 2. The court did not, however, find that Defendant had a duty to disclose T.O.'s unlicensed status. As such, to the extent Plaintiff is attempting to use any of the state court decisions to foreclose this Court's litigation of those issues, Plaintiff has not directed this Court to any findings that would preclude this Court's adjudication of the issues.

***D. 11 U.S.C. § 523(a)(2)(A)***

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

***1. Has Plaintiff Shown a Misrepresentation or Fraudulent Omission?***

Here, Plaintiff asserts that Defendant made two fraudulent omissions and one misrepresentation. First, Plaintiff asserts that Defendant did not disclose to Plaintiff that T.O. was not a licensed contractor. Second, Plaintiff asserts that Defendant did not disclose to Plaintiff that the survey used for the construction drawings and engineering plans was based on a 33 year old as-built survey. Finally, Plaintiff asserts that Defendant fraudulently caused the construction drawings to appear as though a recent survey had been performed. Each of these omissions or representations is discussed separately below.

***a. The Omission Regarding T.O.'s Unlicensed Status***

Defendant admits that T.O. was not licensed at the time he entered into the 2004 Agreement with Plaintiff. As noted above, to meet its burden of proof, Plaintiff must demonstrate that Defendant's failure to disclose T.O.'s unlicensed status was a material fact that Defendant was under a duty to disclose, and that Defendant's omission was motivated by an intent to deceive Plaintiff. *Harmon*, 250 F.3d at 1246

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Darin Davis**  
n.4.

**Chapter 7**

In Plaintiff's MSJ, Plaintiff does not provide any legal authority regarding whether Defendant had a duty to disclose to Plaintiff that T.O. was not licensed, or that the omission of this fact was material. For the first time in the Reply, Plaintiff cites California Business & Professions Code ("B&P") §§ 7030, 7030.1, 7030.5, 7031 and 7031.5.

Pursuant to B&P § 7030(a), "every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor: 'Contractors are required by law to be licensed and regulated by the [CSLB]....'" However, this statute does not require contractors to disclose whether they are licensed; the statute only requires that written contracts include the language above. Moreover, the required language under B&P § 7030(a) was included in the 2004 Agreement. Davis Declaration, ¶ 5, Exhibit 1. The next statute cited by Plaintiff, B&P § 7030.1(a), states:

A contractor, who has his or her license suspended or revoked two or more times within an eight-year period, shall disclose either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, in a document provided prior to entering into a contract to perform work on residential property with four or fewer units, any disciplinary license suspension, or license revocation during the last eight years resulting from any violation of this chapter by the contractor, whether or not the suspension or revocation was stayed.

Plaintiff has not shown that T.O. had its license suspended or revoked two or more times within an eight-year period prior to the parties' entering into the 2004 Agreement. The only citations on the record are from 2005, *after* the parties executed the 2004 Agreement. As such, Defendant did not have a duty to disclose T.O.'s unlicensed status under this statute either.

B&P § 7031 does not discuss disclosure at all; rather, that statute prohibits unlicensed contractors from filing actions to recover compensation based on any contract where a license is required. Further, B&P § 7031.5 requires contractors to give their license

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

number to the county or city from where the contractor will obtain permits. As such, these statutes are not applicable to contractors making disclosures regarding their license to subcontractors.

The only potentially applicable statute is B&P § 7030.5, which states that "[e]very person licensed pursuant to this chapter shall include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as prescribed by the registrar of contractors, used by such a person." [FN7]. This statute does create a duty to disclose a license number on "all construction contracts" and "subcontracts." B&P § 7030.5. However, by its plain language, this statute applies to "[e]very person *licensed pursuant to this chapter...*" B&P § 7030.5. Both parties acknowledge that T.O. was not licensed at the time T.O. and Plaintiff entered into the 2004 Agreement.

The other source of a duty to disclose raised by Plaintiff in the Reply is that, after CSLB cited D&S Development, D&S Development agreed to "include a statement in all advertisements that he/she is unlicensed." Reply, p. 3. However, neither the timing nor the language of this citation is properly before the Court. [FN8]. Even if the record established that the citation included this language and that Defendant was cited before T.O. entered into the 2004 Agreement with Plaintiff, the statement to which Plaintiff refers instructs D&S Development to include a statement in *advertisements* that D&S Development is unlicensed. As such, any duty arising from this document concerns advertisements, and does not create a duty related to construction or subcontractor agreements.

Nevertheless, that Plaintiff has not referred the Court to an applicable duty to disclose does not mean that Defendant did not have a duty to disclose T.O.'s unlicensed status to Plaintiff. Under federal law, "[i]n determining the duty to disclose in the context of fraud under 11 U.S.C. § 523(a)(2)(A), we look to the common law concept of fraud at the time such language was added to the statute." *In re Apte*, 96 F.3d 1319, 1324 (9th Cir. 1996) (citing *Field v. Mans*, 516 U.S. 59, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995)). "The Supreme Court in *Field* looked to the Restatement (Second) of Torts (1976) (the 'Restatement') as 'the most widely accepted distillation of the common law of torts' at the relevant time." *Id.* Pursuant to the Restatement, the common law of torts recognizes a duty to disclose in the following circumstances:



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

- (1) One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.
  
- (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,
  - (a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; and
  - (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; and
  - (c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; and
  - (d) the falsity of a representation not made with the expectation that it would be acted upon, if he subsequently learns that the other is about to act in reliance upon it in a transaction with him; and
  - (e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.

Restatement § 551; *see also In re Tolman*, 491 B.R. 138, 152 (Bankr. D. Idaho 2013) (adopting the Restatement duties to disclose in light of *Field*). California law also provides for similar duties to disclose:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

For an omission to be actionable under section 523(a)(2)(A), the defendant must be under a duty to disclose the omitted information. Under California law, there are four circumstances in which a duty to disclose material facts may arise: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; or (4) when the defendant makes partial representations but also suppresses some material facts. The last three circumstances do not require a fiduciary relationship, so long as there exists some relationship between the defendant and plaintiff, such as one between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement.

*In re Carroll*, 549 B.R. 375, 382 (Bankr. N.D. Cal. 2016), *aff'd*, 2017 WL 3122613 (B.A.P. 9th Cir. July 21, 2017).

Here, under the Restatement, subsection (a) does not apply because Plaintiff has not demonstrated that there was a fiduciary relationship between the parties. Subsection (b) does not apply because Plaintiff has not asserted that Defendant made "partial" or "ambiguous" statements regarding licensure; according to Plaintiff, Defendant did not make any representations at all. Subsection (c) does not apply because subsequent information did not make a previous representation untrue. Again, according to Plaintiff, there was no representation at all. Subsection (d) also does not apply because Defendant did not make any representations regarding licensure. Consequently, the only possible subsection is (e).

To show that Defendant had a duty to disclose T.O.'s unlicensed status under subsection (e), Plaintiff has to show that: (A) whether T.O. was licensed was a "fact basic to the transaction;" (B) Defendant knew that Plaintiff was going to enter into the 2004 Agreement under a mistaken belief as to the "basic fact;" and (C) Plaintiff, because of the relationship between Plaintiff and Defendant, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts. According to the Restatement:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

A basic fact is a fact that is assumed by the parties as a basis for the transaction itself. It is a fact that goes to the basis, or essence, of the transaction, and is an important part of the substance of what is bargained for or dealt with. Other facts may serve as important and persuasive inducements to enter into the transaction, but not go to its essence. These facts may be material, but they are not basic.

Restatement § 551, comm. j; *see also In re Craciun*, 2014 WL 2211742, at \*5-6 (B.A.P. 9th Cir. May 28, 2014).

Here, Plaintiff must show that T.O.'s unlicensed status was a "fact that goes to the... essence... of the transaction" or that it was "an important part of the substance of what is bargained for or dealt with." The only relevant evidence submitted by Plaintiff is the testimony from the Ludlows and Mr. Hodge, noting that Plaintiff would not have entered into the 2004 Agreement had Defendant informed Plaintiff that T.O. was not licensed. This evidence may be persuasive for a determination of materiality, discussed below, but it is not sufficient to deem the information a "basic fact."

However, even assuming this information was a basic fact, Plaintiff has not shown that Defendant knew that Plaintiff was entering into the 2004 Agreement under the mistaken belief that T.O. was licensed. There is no reason to assume, for instance, that Defendant did not believe that Plaintiff may have independently researched whether T.O. was licensed. Finally, Plaintiff has made no showing regarding whether the relationship between the parties, the customs of the trade or other circumstances would lead Plaintiff to reasonably expect a disclosure of T.O.'s unlicensed status. Plaintiff's expert, Mr. Poles, only provides a conclusory statement that Defendant should have disclosed T.O.'s unlicensed status. Mr. Poles does not state that such disclosure is a custom of the trade, or provide any other basis for why Defendant should have disclosed this information.

As for California law, the first duty is inapplicable because Plaintiff has not shown that the parties were in a fiduciary relationship. The second duty is inapplicable because Plaintiff has not shown that Defendant had *exclusive* knowledge of T.O.'s unlicensed status. In other words, Plaintiff has not shown that Plaintiff could not have learned this information elsewhere. The fourth duty is also inapplicable because Defendant did not make any partial representations.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT... Darin Davis

Chapter 7

The only potentially applicable duty is the third: if Defendant actively concealed a material fact from Plaintiff. Regarding "active concealment," "[m]ere nondisclosure does not constitute active concealment. Rather, to state a claim for active concealment, Plaintiff must allege specific 'affirmative acts on the part of the [D]efendants in hiding, concealing or covering up the matters complained of.'" *Herron v. Best Buy Co. Inc.*, 924 F.Supp.2d 1161, 1176 (E.D. Cal. 2013) (quoting *Lingsch v. Savage*, 213 Cal.App.2d 729, 734 (Ct. App. 1963)). Here, Plaintiff has not demonstrated that Defendant affirmatively acted to conceal T.O.'s status as an unlicensed entity. Rather, the record shows "mere nondisclosure."

Even if the Court were to find that Defendant had a duty to disclose T.O.'s status as an unlicensed entity, which Plaintiff has not shown, Plaintiff has not met its burden of proving that Defendant's omission of T.O.'s unlicensed status was motivated by an intent to deceive Plaintiff. *Harmon*, 250 F.3d at 1246 n.4. Plaintiff relies on its expert witness, Mr. Poles, to show that Defendant acted with an intent to deceive. However, Mr. Poles does not have personal knowledge of Defendant's intent. Based on a reading of the decisions and judgments from the state trial and appellate courts, Mr. Poles offers legal conclusions as to Defendant's intent. The Court would not admit such testimony even if Mr. Poles qualified as a legal expert. *See United States v. Diaz*, 876 F.3d 1194, 1197 (9th Cir. 2017) ("Consistent with [Federal Rule of Evidence] 704 (a), this court has repeatedly affirmed that an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law.") (internal quotation omitted). At this time, Plaintiff has not met its burden of showing that Defendant's omissions were motivated by an intent to deceive Plaintiff.

***b. The Omission Regarding the As-Built Survey***

Plaintiff has not cited any authority, in Plaintiff's MSJ or the its reply, providing that a contractor has a duty to disclose whether a survey is an as-built survey or a recent survey. Plaintiff again relies on the Poles Declaration, in which Mr. Poles states that Defendant "should have disclosed the fact that the plans and specifications he provided to [Plaintiff] for preparation of its bid for construction work, prior to entering into the contract with [T.O.], were based upon an approximately 33-year old as built survey." Poles Declaration, ¶ 11. However, Mr. Poles has based his opinions on the state trial and appellate court decisions, and those decisions did not find that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Defendant had a legal duty to disclose that the survey was an as-built survey.

Moreover, Mr. Poles is not qualified to interpret the legal opinions set forth by the state trial and appellate courts. Based on Mr. Poles' qualifications, Mr. Poles could have provided insight regarding, for example, whether disclosing the age of a survey is a custom in his trade. The Poles Declaration contains no such information.

The various duties to disclose from the Restatement and under California law are also inapplicable as to this omission. With respect to Restatement § 551, subsections (a), (b), (c) and (d) are inapplicable for the same reasons as noted above. Again, the only potentially applicable subsection is (e), but Plaintiff has not demonstrated that the age of the survey is a "basic fact" that is essential to the transaction. Plaintiff has also offered no evidence on whether the relationship between the parties, the customs of the trade or other objective circumstances gave rise to a duty to disclose.

Plaintiff offers inadmissible exhibits for the proposition that Defendant had a duty to disclose the age of the survey. Bowen Declaration, Exhibits 4-6. Some of these exhibits may be read to relate to customs of the trade, however: (A) they are inadmissible; and (B) they do not serve to establish either customs of the trade or a duty to disclose the age of surveys. The first exhibit is a letter signed by Dale Ortmann of the Haaland Group, Inc. and sent to a man named Ruben Robles at D&S Homes. Bowen Declaration, Exhibit 4. The letter is not authenticated by either Mr. Robles or Mr. Ortmann, and qualifies as hearsay. [FN9]. Even if the Court were to admit this exhibit into evidence, nothing in the letter establishes a duty to disclose to Plaintiff that Defendant relied on an as-built survey. The letter merely discusses D&S Homes' initial decision not to authorize a design survey; whether Defendant had a duty to obtain a new survey or disclose to subcontractors that Defendant relied on an as-built survey is not mentioned.

The excerpt from Mr. Ortmann's deposition is also hearsay, and will not be admitted as evidence. [FN10]. The excerpt is also incomplete; Plaintiff offers a very small portion of Mr. Ortmann's deposition without any context as to what Mr. Ortmann is testifying about. Even if the Court were to admit this testimony from Mr. Ortmann, Mr. Ortmann does not say anything regarding a duty to disclose to Plaintiff whether the survey Defendant used was an as-built survey. The same is true for state court testimony offered by Mohammad Fatemi. Again, this testimony is hearsay and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

offered without any context. [FN11]. The Court does not have any evidence of Mr. Fatemi's identity. Even if the Court were to admit this testimony, Mr. Fatemi does not offer any insight into whether Defendant had a duty to disclose that he was relying on an as-built survey. Mr. Fatemi states only that as-built surveys are sometimes inaccurate.

As for duties under California law, the first, third and fourth duties are inapplicable for the same reasons offered under the omission regarding T.O.'s unlicensed status. As for the second circumstance that may create a duty to disclose, where a defendant has exclusive knowledge of material facts not known to the plaintiff, Plaintiff has not demonstrated that Defendant had exclusive knowledge.

Based on the above, Plaintiff has not met its burden of proving that Defendant had a duty to disclose that the survey Defendant used was an as-built survey. However, even if Defendant had such a duty, Plaintiff has not demonstrated that Defendant's omission was motivated by an intent to deceive. As noted above, Mr. Poles is not qualified to testify as to Defendant's intent. In addition, none of the inadmissible exhibits, were they to be admitted, establish that Defendant had any reason to believe the as-built survey was unreliable *prior to* the 2004 Agreement. The letter from Mr. Ortmann is dated after the 2004 Agreement and the testimony by Mr. Ortmann and Mr. Fatemi does not provide any insight into what Defendant knew or should have known prior to entering into the 2004 Agreement. In addition, Defendant stated that he did not prepare the plans or have any knowledge that the plans were not accurate. Davis Declaration, ¶ 27. There is no other evidence establishing that Defendant possessed deceptive intent.

***c. The Alleged Representation Regarding the Construction Drawings***

In Plaintiff's MSJ, Plaintiff requests a finding that Defendant made an affirmative misrepresentation regarding the drawings.

There is no evidence that Defendant made any kind of representations regarding the construction drawings or plans at all. The declarations of Jeffrey Ludlow, Matthew Ludlow and Tom Hodge include the exact same testimony: that Defendant did not disclose that the survey was a 33 year old as-built survey, and that Plaintiff would not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

have entered into the 2004 Agreement if it knew that Defendant had not commissioned an updated survey. Neither Jeffrey Ludlow, Matthew Ludlow nor Mr. Hodge testified that Defendant misrepresented the age of the survey or made the constructing drawings appear as if a recent survey had been performed. It is unclear how Plaintiff used the testimony by the Ludlows and Mr. Hodge, all of whom only stated that Defendant did not disclose the age of the survey, to assert to the Court that Defendant manipulated the construction drawings or otherwise made an affirmative misrepresentation regarding the nature of the survey. There is no evidence of a misrepresentation regarding the construction drawings or the age of the survey at all. Consequently, Plaintiff has not met its burden as to this alleged representation.

***d. Defendant's Representations to the City***

In Defendant's MSJ, Defendant asserts he did not make any fraudulent representations to the City. Neither the Complaint nor the record before this Court at this time indicate that Plaintiff is basing part of its 11 U.S.C. § 523(a)(2)(A) claim on representations made to the City. As noted above, these representations were at issue in the Bustamante Lawsuit, but are not at issue here. As such, the Court will not enter judgment one way or another on this issue.

***2. Has Plaintiff Shown Knowledge of Falsity or Intent to Deceive?***

Plaintiff has not met its burden of demonstrating that Defendant had knowledge of falsity or an intent to deceive. For the reasons stated above, Plaintiff has not shown that Defendant knew he had any duty to disclose the omissions noted by Plaintiff.

As for an intent to deceive, Plaintiff offers Mr. Poles' testimony. Again, Mr. Poles does not have personal knowledge regarding Defendant's knowledge or intent. Instead, Mr. Poles refers to the state trial or appellate courts' legal findings. Neither of those courts made any findings as to Defendant's intent.

Other than Mr. Poles' testimony and the state court decisions, the evidence offered by Plaintiff is either vague as to time or dated after Plaintiff and T.O. entered into the 2004 Agreement, such that it is irrelevant to Defendant's intent at the time of contracting. Plaintiff has offered no other circumstantial evidence establishing an intent to deceive. Consequently, Plaintiff has not met its burden of demonstrating that, at the time T.O. entered into the 2004 Agreement with Plaintiff, Defendant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT... Darin Davis

Chapter 7

intended to deceive Plaintiff.

**3. Has Plaintiff Shown Nondisclosure of a Material Fact?**

When a fraud case involves a failure to disclose instead of an affirmative misrepresentation, "positive proof of reliance is not a prerequisite to recovery." *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-54, 92 S.Ct. 1456, 1472, 31 L.Ed.2d 741 (1972); *see Apte*, 96 F.3d at 1323. "[T]he nondisclosure of a material fact in the face of a duty to disclose has been held to establish the requisite reliance and causation for actual fraud under the Bankruptcy Code." *Apte*, 96 F.3d at 1323. "A fact is considered material if a hypothetical reasonable person would have considered it important to know before entering into the transaction." *In re Thomas*, 2017 WL 1160868, at \*5 (B.A.P. 9th Cir. Mar. 28, 2017).

As to Defendant's omission regarding T.O.'s unlicensed status, Plaintiff has not offered any authority as to whether this information was material. Nevertheless, the state court apparently gave weight to Defendant's failure to disclose that T.O. was not a licensed contractor. Phase Two Judgment, p. 2 ("Defendant [T.O.] failed to disclose to [Plaintiff] that it was not a licensed contractor and has never been a licensed contractor."). T.O.'s unlicensed status also led to a citation by CSLB. Davis Declaration, ¶ 18. In addition, some courts have held that a party's failure to disclose whether it is licensed is a material omission. *See, e.g., U.S. S.E.C. v. Levine*, 671 F.Supp.2d 14, 29 ("Surely, a reasonable investor would want to know that the 'escrow agent' he/she is sending their money to is not even licensed to be engaged in that type of business activity."); *and SEC v. Randy*, 38 F.Supp.2d 657, 669 (N.D. Ill. 1999) (holding that the fact that bank whose securities were being sold was unlicensed was material).

Moreover, the California statutes cited by Plaintiff in the Reply, as well as the policy behind requiring licensing of contractors, indicates that information about a contractor's unlicensed status is material. *See, e.g., Rinaldi v. Workers' Comp. Appeals Bd.*, 199 Cal.App.3d 217, 225 (Ct. App. 1988) ("The purpose of the Contractors' State License Law is to protect the public by prohibiting dishonest, incompetent, inexperienced or financially irresponsible persons from acting as building contractors. Accordingly, contractors are required by law to be licensed.") (internal quotations and citations omitted); *see also* B&P § 7028(a)(1) ("Unless



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state [if]... [t]he person is not licensed in accordance with this chapter."); *and* B&P § 7028.5 ("It is unlawful for a person who is or has been a partner, officer, director, manager, responsible managing employee, responsible managing member, responsible managing manager, or responsible managing officer of, or an individual who is listed in the personnel of record of, a licensed partnership, corporation, limited liability company, firm, association or other organization to individually engage in the business or individually act in the capacity of a contractor within this state without having a license in good standing to so engage or act."). In light of this authority, the Court will find that information about T.O.'s unlicensed status was material.

The same cannot be said regarding the fact that Defendant did not disclose to Plaintiff that he relied on an as-built survey. The state trial and appellate courts do not discuss whether this is a material fact. Plaintiff has not directed the Court to any authority requiring Defendant to use recent as opposed to as-built surveys. Moreover, if disclosures regarding the age of the survey were so material that Plaintiff would not have entered into the 2004 Agreement had Plaintiff known the age of the survey, Plaintiff's personnel presumably would have inquired about the age of the survey during the parties' negotiations. There is no evidence that Plaintiff's personnel did so. Consequently, Plaintiff has not met its burden of proving that the omission regarding the as-built survey was material.

***4. Has Plaintiff Shown Damages Proximately Caused by Fraudulent Omissions?***

Even if Plaintiff could meet its burden of proving the elements above, Plaintiff has not met its burden of providing any evidence regarding damages. Both parties request summary adjudication of this issue in their respective motions for summary judgment. In Plaintiff's MSJ, Plaintiff asserts that it has shown damages by reference to the Claim Order. In Defendant's MSJ, Defendant asserts that Plaintiff cannot show damages because all of Plaintiff's damages have been paid and Plaintiff has not demonstrated that it is entitled to further damages based on its claim of fraud.

First, Plaintiff has not met its burden of proving damages. That the Court withheld determination of whether Plaintiff was entitled to the remaining amount of damages it

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

asserted in the Claim does not establish that Plaintiff is entitled to those damages. At the time the Court entered the Claim Order, the Court temporarily allowed the Claim pending the outcome of the state court's decision on Plaintiff's fraud cause of action. Subsequently, the Court decided it would no longer stay this adversary proceeding to await the outcome of the state court fraud action. Because this Court instructed the parties that it would be trying Plaintiff's § 523(a)(2)(A) claim here instead of waiting for the state court's decision, Plaintiff now has a burden of proving each element of § 523(a)(2)(A), including damages (as opposed to, for instance, relying on issue preclusion to demonstrate damages). Plaintiff has offered no evidence on damages at all. Consequently, Plaintiff's MSJ must be denied.

Here, Defendant has also requested summary judgment on the issue of damages. For his part, Defendant has provided the Satisfaction of Judgment, demonstrating that all amounts owed to Plaintiff from the Phase One Judgment, the Phase Two Judgment and any awards of attorneys' fees and costs have been paid. Plaintiff has not provided any evidence refuting this evidence. Plaintiff relies only on the Claim Order, and implies there might be additional damages arising from Plaintiff's claim of fraud.

Again, Plaintiff cannot rely on the Claim Order. The Court never established that Plaintiff is entitled to the \$1,130,951.42 remaining on the Claim. The Court merely withheld deciding the issue until a determination could be made regarding Plaintiff's fraud claim. The Claim Order is *not* evidence of Plaintiff's damages. Consequently, Plaintiff must demonstrate that it incurred damage *separate and apart* from the damages already awarded to Plaintiff as a result of the Phase One Judgment, the Phase Two Judgment and the attorneys' fees award.

Plaintiff has not provided any evidence of damages. Even if Plaintiff's damages depend on a finding that Defendant defrauded Plaintiff, Plaintiff has the burden of showing how Plaintiff was damaged by the alleged fraud. In other words, Plaintiff must demonstrate that it incurred monetary damages (that would be subject to nondischargeability) as a result of the fraud, and that these damages have not already been satisfied by the Satisfaction of Judgment.

The operative complaint in the State Court Action, filed by Plaintiff, reflects that Plaintiff's breach of contract and fraud causes of action were based on the same facts. RJN, Exhibit 2. One of Plaintiff's fraud counts from the State Court Action is based

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

on Defendant's failure to pay Plaintiff the amount owed under the 2004 Agreement. RJN, Exhibit 2, pp. 12-14. The other fraud count is based on Defendant's failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the 2004 Agreement. RJN, Exhibit 2, pp. 14-15. Plaintiff did not allege additional damages based on these fraud counts. The only damages specifically alleged by Plaintiff in the state court complaint were based on Defendant's failure to pay Plaintiff under the 2004 Agreement. Defendant has shown that these damages have already been paid.

In light of the fact that the fraud and breach of contract causes of action were based on the same set of facts, Plaintiff has not shown that it is entitled to different actual damages under its fraud counts. In fact, Plaintiff itself represented to the state appellate court that separating attorneys' fees incurred prosecuting the breach of contract cause of action from the attorneys' fees incurred prosecuting the fraud cause of action was "not appropriate because the trial court could reasonably find that the contract and fraud issues were 'inextricably intertwined.'" Poles Declaration, Exhibit 13. Because Plaintiff took the position that the two causes of action are "inextricably intertwined" in the State Court Action, Plaintiff is judicially estopped from taking a different position at this time. According to the Supreme Court—

Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.

Although we have not had occasion to discuss the doctrine elaborately, other courts have uniformly recognized that its purpose is to protect the integrity of the judicial process, by prohibiting parties from deliberately changing positions according to the exigencies of the moment.

*New Hampshire v. Maine*, 532 U.S. 742, 749-50, 121 S.Ct. 1808, 1814, 148 L.Ed.2d 968 (2001) (internal quotations omitted). "The doctrine extends to incompatible

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

statements and positions in different cases." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 566 (B.A.P. 9th Cir. 2002) (citing to *Risetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 605 (9th Cir. 1996)). Courts consider the following factors when applying the doctrine of judicial estoppel:

First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts.

*New Hampshire*, 523 U.S. at 750-51 (internal quotations omitted).

Here, should Plaintiff assert that the two causes of action are not "inextricably intertwined" and that Plaintiff is entitled to different actual or compensatory damages, Plaintiff's position will be clearly inconsistent with its position in state court. In addition, Plaintiff succeeded in persuading the state appellate court that the two causes of action are "inextricably intertwined," because the state appellate court approved the trial court's award of attorneys' fees based, in part, on the concept that the two causes of action were "inextricably intertwined." Because the two causes of action are "inextricably intertwined," and because Plaintiff has submitted no evidence at all regarding Plaintiff's entitlement to additional general, actual or compensatory damages, Plaintiff has not met its burden of proving actual damages.

Nevertheless, both in state court and through its opposition to Defendant's MSJ, Plaintiff has also requested punitive damages. Neither the state court nor this Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

has yet made a determination regarding whether Plaintiff is entitled to punitive damages, which requires "clear and convincing evidence that defendant has been guilty of oppression, fraud, or malice." Cal. Civ. Code § 3294(a). At this time, because neither party has prevailed on its motion for summary judgment, a finding regarding whether Plaintiff is entitled to punitive damages is premature. If Plaintiff successfully proves fraud at trial, Plaintiff may then show its entitlement to punitive damages. Because there is a genuine issue of material fact regarding whether Plaintiff is entitled to punitive damages, the Court cannot enter judgment in favor of Defendant at this time.

### **III. CONCLUSION**

The Court will grant summary adjudication in favor of Plaintiff only on the following issue: the Court finds that Defendant's nondisclosure of T.O.'s status as an unlicensed entity was material. Otherwise, the Court denies both Plaintiff's MSJ and Defendant's MSJ.

Plaintiff must submit an order within seven (7) days.

### **FOOTNOTES**

1. This background section includes only statements of undisputed fact and portions of declarations to which there are no sustained evidentiary objections.
2. The Bowen Declaration authenticates Exhibit 15 to the Poles Declaration. Exhibit 15 is the California Court of Appeals' decision in *Asphalt Professionals, Inc. v. D and S Homes, Inc., et. al.*, Case No. B238597, 2012 WL 6604995 (Ct. App. Dec. 19, 2012). Defendant was a party to this action. The Court may take judicial notice of this opinion. In addition, the only evidentiary objection to this exhibit, found in Defendant's evidentiary objections to the Bowen Declaration [doc. 184], is on the basis of relevance. The opinion is relevant to the issues in both motions, especially as evidence of the procedural history between the parties.
3. This portion of Defendant's declaration is admitted only as to Defendant's belief, not as to the truth of the statements made by CSLB or whether the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

statements are legally accurate.

4. The Bowen Declaration authenticates Exhibit 12 to the Poles Declaration. Exhibit 12 is the interlocutory judgment regarding phase one from the trial court in the case *Asphalt Professionals, Inc. v. D and S Homes, Inc., et. al.*, Case No. SC044181. Defendant was a party to this action. The Court may take judicial notice of this judgment. In addition, the only evidentiary objection to this exhibit, found in Defendant's evidentiary objections to the Bowen Declaration [doc. 184], is on the basis of relevance. The opinion is relevant to the issues in both motions, especially as evidence of the procedural history between the parties.
5. The Bowen Declaration authenticates Exhibit 13 to the Poles Declaration. Exhibit 13 is the California Court of Appeals' decision in *Asphalt Professionals, Inc. v. T.O. IX, LLC*, Case No. B230927, 2011 WL 5843469 (Ct. App. Nov. 22, 2011). Defendant was a party to this action. The Court may take judicial notice of this opinion. In addition, the only evidentiary objection to this exhibit, found in Defendant's evidentiary objections to the Bowen Declaration [doc. 184], is on the basis of relevance. The opinion is relevant to the issues in the both motions, especially as evidence of the procedural history between the parties.
6. On October 15, 2014, after all the briefing on the Objection to Claim, Plaintiff filed a separate claim for \$2 million, based on the fraud action in state court. The Court did not use this proof of claim in its calculation because the proof of claim was filed after the parties completed their briefing, and the proof of claim did not amend the original proof of claim; rather, Plaintiff filed an additional proof of claim.
7. The word "person" for purposes of this statute "includes an individual, a firm, partnership, corporation, limited liability company, association, or any combination thereof." B&P § 7025(b).
8. Mr. Bowen does not, and cannot, authenticate the citation itself. The only reference to the citation that is admissible is Defendant's admission, in the Davis Declaration, that the CSLB issued certain citations to Defendant and/or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

his entities. Davis Declaration, ¶¶ 13-21.

9. Defendant objected on the bases of hearsay and lack of foundation, and the objections will be sustained.
10. Defendant objected to this exhibit on the bases of hearsay and lack of foundation. The objection will be sustained on both grounds.
11. Defendant objected to this exhibit on the bases of hearsay and lack of foundation. The objection will be sustained on both grounds.

Tentative ruling regarding the evidentiary objections to the identified exhibits to, and paragraphs in, the Declarations set forth below:

**Plaintiff's Evidentiary Objections to the Declaration of Darin Davis**

paras. 6, 9, 11, 13-16, 22-23, 26: overrule

para. 17: sustain as to "*while the CSLB knew*;" overrule as to the rest

para. 20: overrule as to "*I was never sanctioned personally because at all times during the construction of the Yolanda project*;" sustain as to the rest

para. 21: sustain as to "*During the investigation of both citations for the Yolanda Project, the CSLB became aware that the Whitman Project was being constructed*;"

overrule as to the rest

**Plaintiff's Evidentiary Objections to Defendant's Request for Judicial Notice**

exs. 2-5, 7-9, 14, 16: overrule

**Defendant's Evidentiary Objections to the Declaration of Tom Hodge**

paras. 4, 5, 7 and 8: overrule

para. 6: sustain as to "*and we would not have conducted business with T.O. IX, LLC*;" overrule as to the remainder

para. 9 sustain as to "*and API would not have conducted business with T.O. IX, LLC*;" overrule as to the remainder

**Defendant's Evidentiary Objections to the Declaration of Ray Bowen**

exhibits 4-6, 18.1-18.2, 19.5: sustain

exhibits 12-15, 17: overrule

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 01, 2018

Hearing Room 301

2:30 PM

CONT... Darin Davis

Chapter 7

**Defendant's Evidentiary Objections to the Declaration of Matthew Ludlow**

paras. 3-6, 8-10, 17: overrule

paras. 11-16: sustain

para. 7: sustain as to "*I know the terms and conditions of the insurance coverage of API strictly prohibit it from entering into any construction contracts with unlicensed contractors;*" overrule as to the remainder

**Defendant's Evidentiary Objections to the Declaration of Jeffrey Ludlow**

paras. 3, 6, 17: overrule

paras. 5, 8-16: sustain

para. 7: sustain as to "*I know the terms and conditions of the insurance coverage of API strictly prohibit it from entering into any construction contracts with unlicensed contractors;*" overrule as to the remainder

**Defendant's Evidentiary Objections to the Declaration of Michael S. Poles**

paras. 10-12: sustain

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#5.00** Motion by defendant Darin Davis for summary judgment or in the alternative summary adjudication of issues regarding plaintiff's complaint to determine dischargeability of debt pursuant to Bankruptcy Code Section 523(a)(2)(A)

fr. 1/24/18

Docket 162

**Tentative Ruling:**

See Cal #4 for ruling.

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 01, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

9:30 AM

1:17-13021 Juanita M Slaughter

Chapter 7

#1.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.  
VS  
DEBTOR

Docket 21

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Juanita M Slaughter

Represented By  
Jonathan N Vaknin

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Sheryl K Ith

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10554 Domenico Longo**

**Chapter 13**

**#2.00** Motion for relief from stay [PP]

FIRST CITY CREDIT UNION  
VS  
DEBTOR

Docket 49

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 1/24/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Domenico Longo

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

9:30 AM

1:15-13828 Jose Luis Tellez-Magana and Nancy Nayelly Rivera-Ortiz

Chapter 13

#3.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 35

\*\*\* VACATED \*\*\* REASON: Case dismissed on 1/24/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jose Luis Tellez-Magana

Represented By  
Juanita V Miller

**Joint Debtor(s):**

Nancy Nayelly Rivera-Ortiz

Represented By  
Juanita V Miller

**Movant(s):**

Ford Motor Credit Company LLC

Represented By  
Jennifer H Wang

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

9:30 AM

1:16-10043 Betty Lynn Paul

Chapter 13

#4.00 Motion for relief from stay [PP]

PERITUS PORTFOLIO SERVICES  
VS  
DEBTOR

Docket 46

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Betty Lynn Paul

Represented By  
Bradley J Yourist

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #5.00** Pre-trial conference re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17

Docket 1

**Tentative Ruling:**

Trial has been set to take place from March 19-21, 2018. The Court also has available for trial the dates of March 22-23, 2018. If the plaintiff's health requires that the trial dates be continued, the Court could continue the trial to the week of June 18, 2018.

Having reviewed the parties' revised Joint Pre-Trial Stipulation, filed on January 25, 2018 [doc. 90] (the "Revised Pre-Trial Stipulation"), the Court will determine the following issues of law, as set forth in the Revised Pre-Trial Stipulation: Plaintiff's issues nos. 1, 2, 6, 7, 8 and 11 and Defendant's issue no. 4.

The Ninth Circuit Bankruptcy Appellate Panel (the "BAP") did not remand for this Court to determine whether the element of malice had been conclusively established. As stated in the BAP's Memorandum, "Comparing the elements of the California intentional tort of malicious prosecution with the requirements to establish a willful and malicious injury excepted from the debtor's discharge under § 523(a)(6), we have no quarrel with the bankruptcy court's conclusion that the 'malicious' element was established . . ." Consequently, the Court will treat the element of malice as having been conclusively established.

The Revised Pre-Trial Stipulation, like the prior version, suggests that the defendant has not completed discovery. What discovery does the defendant seek to take - given that the issues to be determined by this Court primarily concern whether the defendant



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**      **James Ellis Arden**  
acted willfully?

**Chapter 7**

**12/21/2017 Tentative:**

The Court will set this matter for trial for four days during the week of **March 19, 2018.**

**WITNESS TESTIMONY:**

The Court will take all direct testimony by declaration, with the exception of an opposing party called as an adverse witness. Witnesses may be cross-examined live at trial.

The declaration of plaintiff in lieu of live direct testimony must be filed and served **35 days** before trial.

Defendant's declarations in lieu of live direct testimony must be filed and served **28 days** before trial.

Any evidentiary objections to the declarations and any opposition to testimony on the basis that the testimony is precluded by judicial estoppel or that the related issue has been preclusively determined must be filed and served **21 days** before trial.

Any responses to the evidentiary objections and to the issues of estoppel and preclusion must be filed and served **14 days** before trial.

The Court will NOT consider the testimony of any witnesses who were not identified on a party's witness list, and will not consider the testimony of any witness which is not relevant to the issues of fact and law for trial.

**EXHIBITS:**

All trial exhibits must be numbered and marked as required by Local Bankruptcy Rule ("LBR") 9070-1(a).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

**One week prior to trial**, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and one copy of a notebook containing all of that party's trial exhibits, or the parties may deliver a joint exhibit notebook.

**POST-TRIAL BRIEFS:**

The Court will require the parties to file post-trial briefs concerning the evidence from trial. The Court will not require pretrial briefing.

The plaintiff's post-trial brief must be filed and served **21 days** after trial.

The defendant's post-trial brief must be filed and served **35 days** after trial.

Any reply brief by the plaintiff must be filed and served **42 days** after trial.

In light of the decision from the Ninth Circuit Bankruptcy Appellate Panel, *In re Arden*, 2015 WL 4068962 (B.A.P. 9th Cir. 2015), the only legal issue for trial is whether the defendant's conduct was willful. The parties' joint pretrial stipulation (the "JPS") [doc. 81] includes facts and law unrelated to the issue of willfulness. The parties also include legal arguments in the JPS.

As a result, the Court will continue this pretrial conference to **1:30 p.m. on February 1, 2018**, to give the parties an opportunity to edit the JPS to omit issues of fact and law unrelated to the element of willfulness under 11 U.S.C. § 523(a)(6) and to omit any legal argument from the JPS. The parties must submit a revised joint pretrial stipulation no later than **January 22, 2018**.

In addition, in Section G of the JPS, the defendant states that "[n]o discovery has been conducted by either party as determinative motions were filed at the onset of this adversary proceeding. The statement that all discovery is complete may not be correct." Is the defendant asserting that he needs additional discovery prior to trial?

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial dates.

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

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12365 Irina Feldman**

**Chapter 7**

Adv#: 1:17-01104 Fahmy v. Feldman

- #6.00** Status conference re: complaint for non-dischargeability for
1. Debts incurred through false pretenses, false representation or actual fraud under 11 U.S.C. sec 523(a)(2)(A)
  2. Debts incurred through false statements respecting debtor's financial condition under 11 U.S.C. sec 523(a)(2)(B)
  3. Debts incurred for fraud or defalcation while acting in fiduciary capacity, embezzlement, or larceny under 11 U.S.C. sec 523 (a)(4)
  4. Debts incurred through willful and malicious injury to property under 11 U.S.C. sec 523(a)(6)
  5. Debts for a fine, penalty, etc. under 11 U.S.C. sec 523(a)(7)

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 7/13/18.

Deadline to complete one day of mediation: 7/31/18.

Deadline to file pretrial motions: 8/31/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/24/18.

Pretrial: 1:30 p.m. on 10/3/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Irina Feldman**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Irina Feldman

Represented By  
Link W Schrader

**Defendant(s):**

Irina Feldman

Pro Se

**Plaintiff(s):**

Ahmad Fahmy

Represented By  
Daren M Schlecter

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12387 Exclusive German Auto Repair, Inc.**

**Chapter 7**

Adv#: 1:17-01103 Cheung v. Exclusive German Auto Repair, Inc.

- #7.00** Status conference re: complaint to determine dischargeability of debt pursuant to  
1) 11 U.S.C. section 523(a)(2) (A);  
2) 11 U.S.C. section 523 (a)(6)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Another summons issued on 1/30/18. Status conference set for 4/4/18 at 1:30pm**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Exclusive German Auto Repair, Inc.

Represented By  
Maria W Tam

**Defendant(s):**

Exclusive German Auto Repair, Inc.

Pro Se

**Plaintiff(s):**

Kingsang Cheung

Represented By  
Bradford T Child

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

- #8.00** Status conference re: complaint for:
1. denial of debtor's discharge [11 U.S.C. § 727]
  2. determination that debt is non-dischargeable [11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 8/31/18.

Deadline to file pretrial motions: 9/14/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/3/18.

Pretrial: 1:30 p.m. at 10/17/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 303**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#9.00** Defendant's motion for extension of time

Docket 172

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
12/11/2017**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

- #10.00** Plaintiff's motion for order:  
(1) Requiring compliance by the State Bar with Fed. R. Bankr. Pro 7030(b)(6);  
(2) Request for sanctions against State Bar and its counsel; and  
(3) Allowing amendment to depositions topics

Docket 176

**Tentative Ruling:**

Grant in part, deny in part.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On October 20, 2017, the State Bar produced Elizabeth Lew, an administrative assistant in the Mandatory Fee Arbitration Department as its designated Federal Rule of Civil Procedure 30(b)(6) deponent [doc. 231, Transcript of Lew's Deposition].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Plaintiff objected at the deposition to the witness because Plaintiff believed Ms. Lew was not prepared to testify to the deposition categories. Over the next few weeks, the parties exchanged communications regarding a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶¶ 7-8, 16] [doc. 190, Grandt Declaration, ¶¶ 3-7]. The parties did not reach an agreement and did not sign a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶ 16] [doc. 190, Grandt Declaration, ¶ 7].

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

On January 11, 2018, the State Bar filed seven motions in limine to exclude certain evidence at trial (the "Motions in Limine") [doc. 213]. Finally, on January 17, 2018, the State Bar filed another protective order, requesting a global protective order to govern this adversary proceeding (the "Motion for Global Protective Order") [doc. 225].

## II. ANALYSIS

### *A. The Motion to Strike*

Prior to filing a motion to compel, a party must comply with Local Bankruptcy Rule ("LBR") 7026-1(c). Under LBR 7026-1(c)—

- (1) General. Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.
- (2) Meeting of Counsel. Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.
- (3) Moving Papers. If counsel are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties.
  - (A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

- (B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.
- (C) In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion.
- (4) Cooperation of Counsel; Sanctions. The failure of any counsel either to cooperate in this procedure, to attend the meeting of counsel, or to provide the moving party the information necessary to prepare the stipulation required by this rule within 7 days of the meeting of counsel will result in the imposition of sanctions, including the sanctions authorized by FRBP 7037 and LBR 9011-3.

Here, it appears the parties did attempt to meet and confer in accordance with LBR 7026-1(c). Despite their meet and confer, the parties apparently could not agree to a joint stipulation. The LBRs provide that the Court will not entertain a discovery motion "[i]n the absence of [a joint stipulation] or a declaration of counsel of noncooperation..." LBR 7026-1(c)(3)(C). Here, both parties have filed declarations asserting that the other party did not cooperate. The Court will not strike Plaintiff's Motion for Deposition Compliance based on both parties' inability to agree to a joint stipulation.

***B. Plaintiff's Motion for Deposition Compliance***

Pursuant to Federal Rule of Bankruptcy Procedure 7030, "Rule 30 F.R.Civ.P. applies in adversary proceedings." According to Federal Rule of Civil Procedure ("Rule") 30 (b)(6): "[A] party may ... name as the deponent ... a ... corporation ... and describe with reasonable particularity the matters on which examination is requested.... The persons so designated shall testify as to matters known or reasonably available to the organization."

"Pursuant to Rule 30(b)(6), the deponent 'must make a conscientious good-faith

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

endeavor to designate the persons having knowledge of the matters sought by [the party noticing the deposition] and to prepare those persons in order that they can answer fully, completely, unequivocally, the questions posed ... as to the relevant subject matters.'" *Sony Elecs., Inc. v. Soundview Techs., Inc.*, 217 F.R.D. 104, 111–12 (D. Conn. 2002) (citing *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y. 1997)).

"Indeed, the corporation 'is expected to *create* a witness or witnesses with responsive knowledge,' and in doing so must make a good faith effort to 'find out the relevant facts—to collect information, review documents, and interview employees with personal knowledge.'" *Coryn Group II, LLC v. O.C. Seacrets, Inc.*, 265 F.R.D. 235, 238 (D. Md. 2010) (citing *Wilson v. Lakner*, 228 F.R.D. 524, 528–29 (D. Md. 2005)) (emphasis added).

If it appears at the deposition that the witness designated by the corporation is unable to answer questions on matters specified in the deposition notice, a corporate party must immediately designate a new witness. *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989). "Where a corporate deponent fails to provide an adequately prepared designee for deposition, sanctions are proper." *Coryn Group II*, 265 F.R.D. at 239.

"On the other hand, a corporation that engages in good faith efforts to prepare and whose witness provides 'substantial testimony concerning the subject areas of their designation[ ]' despite inadequate preparation may not be subject to sanctions. *Id.* at 240 (citing *Wilson*, 228 F.R.D. at 530). "Nonetheless, where 'unanswered information is significant enough, the 30(b)(6) deposition may have to be reconvened, possibly with a new witness,' at the corporation's expense." *Id.* (citing *Wilson*, 228 F.R.D. at 530).

Here, in light of the authorities above, the State Bar has not complied with its obligation to produce one or more witnesses knowledgeable about the subject matter of the noticed topics. The State Bar does not dispute the fact that Plaintiff served a Rule 30(b)(6) deposition notice describing the subject matters about which Plaintiff was to depose the State Bar's witness. In its opposition to Plaintiff's Motion for Deposition Compliance, the State Bar asserts that Ms. Lew was properly designated as a Rule 30(b)(6) designee and that she answered questions to the extent she could recall.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

The transcript of Ms. Lew's deposition testimony [doc. 231], however, reveals gaps in Ms. Lew's knowledge as well as evasive answers regarding specific topics included in Plaintiff's Rule 30(b)(6) notice. "Although the rule is not designed to be a memory contest...", Ms. Lew should have been able to provide answers to questions that were reasonably available to the State Bar on the noticed topics. *In re Minamoto*, 12-01410, 2015 WL 5025472, at \*1 (Bankr. D. Haw. Aug. 24, 2015).

The State Bar did not meet its obligation to make a conscientious, good faith effort to produce a thoroughly educated witness about the noticed deposition topics and facts known to the State Bar or its counsel. Ms. Lew was unable to provide complete and knowledgeable answers on the subjects of examination described in the Rule 30(b)(6) deposition notice. Throughout her deposition, Ms. Lew repeatedly stated that she did not know the answers to questions posed by Plaintiff, which questions should have been anticipated because of Plaintiff's notice to the State Bar of the deposition categories. *See, e.g.* Deposition Transcript of Elizabeth Lew [doc. 231], 15:11-14, 16:10-15, 17:4-10, 18:1-10, 19: 7-14, 35:7-11, 37:24-35:1, 49:16-23, 51:22-25, 52:1-2, 54:13-21, 55:10-13.

The State Bar has objected to producing another Rule 30(b)(6) deponent because another deposition will not provide Plaintiff with information she does not already have through interrogatories and discovery documents. "Producing documents and responding to written discovery is not a substitute for providing a thoroughly educated Rule 30(b)(6) deponent." *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 541 (D. Nev. 2008). "[T]he two forms of discovery are not equivalent,... and depositions provide a more complete means to obtain information and are, therefore, favored." *Id.*

The State Bar was required to educate an appropriate Rule 30(b)(6) designee to provide knowledgeable answers reasonably available to the State Bar, which includes information ascertainable from files and documents, information from past and present employees, witness testimony and exhibits or any other sources available to the State Bar, including factual information learned through or from its counsel. *See id.* The State Bar must take steps to gain information from reasonably available sources in order to educate its future designated witness. The Court will order the State Bar to produce a fully prepared designee (or designees) capable of responding

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

appropriately at a Rule 30(b)(6) deposition on noticed topics.

***C. Plaintiff's Request to Amend the Deposition Categories***

It is unclear which specific amendments Plaintiff wishes to make to the deposition categories related to the future deposition of the State Bar's Rule 30(b)(6) witness. To the extent Plaintiff wants to depose the State Bar's witness regarding the Advisory, the Court has already ruled that Plaintiff cannot do that. In its rulings on the First Motion to Compel and the First Motion for Protective Order, the Court explicitly ruled that the Advisory is irrelevant and that Plaintiff is not entitled to discovery regarding the Advisory. The Court will not change its ruling.

***D. Sanctions***

Because the Court is also granting the State Bar's Motion to Compel, through which the State Bar is requesting an order compelling Plaintiff to continue her deposition, the Court will not award sanctions to either party. Both parties did not meet their discovery obligations. As a result, the Court will not reward either party with an award of sanctions against the opposing party.

**III. CONCLUSION**

The Court will compel the State Bar to produce another witness to be deposed pursuant to Rule 30(b)(6). The Court will deny the Motion to Strike. The Court also will deny Plaintiff's request to amend the deposition categories and Plaintiff's request for sanctions. The parties should be ready to discuss a time and date for the State Bar's witness's continued deposition.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#11.00** Defendant's motion to compel the continued deposition of Marilyn S. Scheer

Docket 185

**Tentative Ruling:**

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**  
Dunn and Mr. Bacon.

**Chapter 7**

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice, Marilyn Scheer Law Group PC ("MSLG"). On December 15, 2017, Plaintiff filed a motion for a protective order (the "Motion for Deposition Order") [doc. 194], asking the Court to prohibit the State Bar from questioning Plaintiff about MSLG. On January 23, 2018, Plaintiff filed an opposition to the State Bar's Motion to Compel (the "Opposition to the State Bar's Motion to Compel") [doc. 236]. On January 24, 2018, the State Bar filed an opposition to the Motion for Deposition Order (the "Opposition to the Motion for Deposition Order") [doc. 237].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine to exclude certain evidence at trial (the "Motions in Limine") [doc. 213]. Finally, on January 17, 2018, the State Bar filed another protective order, requesting a global protective order to govern this adversary proceeding (the "Motion for Global Protective Order") [doc. 225].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004).

"Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992) (citing *Cipollone v. Liggett Group, Inc.*, 785 F.2d



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

1108, 1121 (3rd Cir. 1986)). Rather, "[t]he party opposing disclosure has the burden of proving 'good cause,' which requires a showing 'that specific prejudice or harm will result' if the protective order is not granted." *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir.2003)).

Here, the State Bar's inquiries regarding MSLG are highly relevant to Plaintiff's request for damages based on lost wages and emotional distress. As to Plaintiff's claim for lost wages, Plaintiff asserts she is willing to stipulate that she made no money from MSLG. However, Plaintiff refused to answer other questions regarding MSLG, such as why Plaintiff was winding down MSLG and what kind of work she was doing for MSLG. These questions are also relevant to Plaintiff's claim of lost wages because Plaintiff is asserting, had it not been for the State Bar placing her on involuntary inactive enrollment, Plaintiff would have been hired by other law firms. Plaintiff's experience at MSLG is relevant to the type of firm and/or practice for which Plaintiff would qualify.

In addition, although Plaintiff briefly mentions that certain information is privileged, Plaintiff has not specified what kind of privileged information the State Bar sought. It does not appear that the State Bar has asked for Plaintiff's work product or attorney-client communications.

Moreover, the information about Plaintiff's state of mind at the time she was winding down her firm is also relevant to Plaintiff's emotional distress damages. If Plaintiff is to argue that the State Bar's refusal to lift Plaintiff's involuntary inactive enrollment caused her emotional distress, the State Bar is entitled to obtain discovery that may show other factors caused Plaintiff's emotional distress.

In light of the above, all of the information sought by the State Bar is relevant. The next issue is whether there is "good cause" to protect Plaintiff from "annoyance, embarrassment, oppression, or undue burden or expense...." Rule 26(c)(1). At this time, it does not appear the State Bar has asked inappropriate questions that would result in annoyance, embarrassment or oppression. Plaintiff has refused to answer relevant questions regarding MSLG, which questions go at the heart of the remaining issue in this adversary proceeding, namely, damages. As such, there is no good cause to enter a protective order.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**III. CONCLUSION**

The Court will grant the State Bar's Motion to Compel and deny the Motion for Deposition Order. The parties should be ready to discuss a time and date for the Plaintiff's continued deposition.

The State Bar must submit an order within seven (7) days.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#12.00** Defendant's motion to strike plaintiffs motion to compel

Docket 189

**Tentative Ruling:**

For the reasons stated in Cal #10, the Court will deny this motion.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#13.00** Plaintiff's motion to extend discovery cut-off and other pretrial deadlines for purposes of allowing plaintiff to join parties under rule 20

Docket 192

**Tentative Ruling:**

Because the Court is granting the plaintiff's motion to compel the defendant to produce a properly designated witness pursuant to Federal Rule of Civil Procedure 30(b)(6), and the defendant indicated it intends to continue its deposition of the plaintiff if the deadlines are extended, the Court will extend the dates and deadlines from the Court's prior scheduling order [doc. 135].

In its now-withdrawn motion to extend [doc. 172], the defendant had asked the Court to extend the current dates and deadlines to the following proposed dates: (A) March 15, 2018 as the discovery cutoff date; (B) June 11, 2018 as the deadline to file pretrial motions; (C) July 1, 2018 as the deadline to file a joint pretrial stipulation; and (D) July 15, 2018 as the pretrial conference date.

Given that the Court is hearing the parties' discovery motions in February, the Court will extend the dates and deadlines that had been proposed by the defendant by an additional month. The Court will set new dates and deadlines as follows: (A) April 16, 2018 as the discovery cutoff date; (B) July 16, 2018 as the deadline to file pretrial motions; (C) August 1, 2018 as the deadline to file a joint pretrial stipulation; and (D) August 15, 2018 as the pretrial conference date.

In light of the extended dates and deadlines, including the discovery cutoff date, the parties should be prepared to discuss a hearing date for the defendant's motion for summary judgment [doc. 220].

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

**Debtor(s):**

Marilyn S. Scheer

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#14.00** Plaintiff's motion for a protective order pursuant to  
Fed. R. Bankr. Pro. 7026 (c) and 7030(d) (3).

Docket 194

**Tentative Ruling:**

For the reasons stated in Cal #11, the Court will deny this motion.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#15.00** Plaintiff's application for order setting hearing on shortened notice pursuant to Local Bankruptcy Rule 9075-1(b) on motion to extend discovery cut-off and Other pretrial deadlines

Docket 197

\*\*\* VACATED \*\*\* REASON: Order denying application entered 12/21/17 [doc. 201].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#16.00** Plaintiff's motion for leave to join additional party defendants pursuant to Fed. R. Bankr. Pro. 7020

Docket 205

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine (the "Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. Plaintiff opposes the Motions in Limine [doc. 233]. Finally, on January 17, 2018, the State Bar filed another protective order (the "Motion for Global Protective Order") [doc. 225], requesting a global protective order to govern this adversary proceeding. On January 24, 2018, Plaintiff filed a response to the Motion for Global Protective Order [doc. 244].

## **II. ANALYSIS**

### ***A. Rule 20***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

Pursuant to Federal Rule of Civil Procedure ("Rule") 20(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7020—

(a) Persons Who May Join or Be Joined.

(2) *Defendants*. Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

"Rule 20 is designed to promote judicial economy, and reduce inconvenience, delay, and added expense ." *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). Courts construe the requirements of Rule 20 liberally to promote trial convenience and to expedite determination of disputes. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.").

Here, both conditions to joinder are met. First, the proposed second amended complaint is requesting relief against all defendants jointly and severally, and Plaintiff's alleged right to relief from the defendants arises out of the same occurrence, namely, the refusal to lift Plaintiff's involuntary inactive enrollment. In addition, any question of law or fact common to all defendants will arise in this adversary proceeding. As such, joining the additional defendants named by Plaintiff is appropriate.

***B. Rule 15***

The State Bar does not oppose joinder pursuant to Rule 20. Rather, the State Bar asserts that Plaintiff cannot amend the FAC on account of Rule 16(b)(4), which states that "[a] schedule may be modified only for good cause and with the judge's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

consent." Rule 16(b)(4) is inapplicable. The Court did not enter a scheduling order providing a deadline by which Plaintiff may amend the FAC or join parties. In addition, based on the Plaintiff's pending motion to extend dates and deadlines, the Court will be modifying the current scheduling order.

The Rule controlling amendments to complaints is Rule 15. Pursuant to Rule 15(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7015—

(1) Amending as a Matter of Course.

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) Other Amendments.

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.

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted).  
Based on this standard, the Court will grant Plaintiff leave to amend the FAC.

***1. Plaintiff is Not Acting in Bad Faith***

"Bad faith in filing a motion for leave to amend exists when the addition of new legal theories are baseless and presented for the purpose of prolonging the litigation." *Paz v. City of Aberdeen*, 2013 WL 6163016, at \*5 (W.D. Wash. Nov. 25, 2013).

The State Bar asserts that Plaintiff is acting in bad faith because the caption to the proposed second amended complaint includes Mr. Dunn and Mr. Bacon as defendants. However, it appears this is a mistake; Plaintiff does not include allegations against Mr. Dunn or Mr. Bacon in the proposed second amended complaint. Regarding the Plaintiff's allegations in the proposed second amended complaint regarding the defendants' legal arguments, as discussed below, the Court will strike these paragraphs from the proposed second amended complaint.

***2. There is No Undue Delay***

Here, Plaintiff notes that she learned the identities of the six new defendants after receiving the State Bar's responses to the first and second set of interrogatories. Plaintiff received these responses on October 10, 2017 and November 8, 2017, respectively. Plaintiff filed the Motion to Join approximately a month and a half later. As such, there was no undue delay in filing the Motion to Join. In addition, the Court is extending all deadlines in this adversary proceeding, including the discovery cutoff date. In light of this fact, allowing the amendment will not cause undue delay to the proceeding.

***3. Prejudice to Opposing Party***

Although granting the Motion to Join may result in additional filings, such as another motion to dismiss, the State Bar will not be significantly prejudiced by the delay because the Court is extending deadlines for the parties to complete discovery. The State Bar states that Plaintiff's amendment will not have any impact on the amount of damages. However, the amendment may have an impact regarding which parties are

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

liable for the damages. The State Bar has not provided that it will be prejudiced in any other way.

**4. *The Proposed Second Amended Complaint is Only Partially Futile***

"A proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Paz*, 2013 WL 6163016 at \*5.

The State Bar asserts that the amendments are futile because: (A) the individual defendants have qualified immunity; and (B) Plaintiff has failed to state a claim for punitive damages.

Regarding the State Bar's assertion about qualified immunity, the Court cannot yet determine whether the individual defendants are immune. Government employees are entitled to qualified immunity "unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982)); see also *Hirsh v. Justices of Supreme Court of State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (finding that employees of the State Bar of California are state agency officials); and *Melek v. State Bar of California*, 230 F.3d 1367 (9th Cir. 2000) (holding that a state bar employee is an official who may be entitled to qualified immunity). "Determining whether a public official is entitled to qualified immunity 'requires a two-part inquiry: (1) Was the law governing the state official's conduct clearly established? (2) Under that law could a reasonable state official have believed his conduct was lawful?'" *Id.* (quoting *Browning v. Vernon*, 44 F.3d 818, 822 (9th Cir. 1995)). Without additional briefing by the parties, the Court does not have enough information or legal authority at this time to ascertain whether the individual defendants' conduct was equivalent to the conduct of "reasonable state officials."

The Court also cannot determine at this time if the individual defendants are liable for damages. Pursuant to 11 U.S.C. § 362(k)(1), "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." A stay violation is willful "if a party knew of the automatic stay, and its actions in violation of the stay were intentional." *In re Stanwyck*, 450 B.R. 181, 191-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

92 (Bankr. C.D. Cal. 2011) (quoting *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). On the other hand, "[a]n award of punitive damages requires 'some showing of reckless or callous disregard for the law or rights of others.'" *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014) (quoting *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989)). Again, the Court does not have enough information to make the pertinent determination at this time.

The Court will, however, strike the portions of the proposed second amended complaint that request relief based on the defendants' legal arguments to the Court. Proposed Second Amended Complaint [doc. 205, Exhibit A], ¶¶ 41-43, 49-51 and ¶ 3 of pp. 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not." The Court will strike these paragraphs (or portions of paragraphs) because the Court has already ruled that Plaintiff's request for punitive damages or sanctions cannot be based on the defendants' legal arguments to this Court. Ruling, pp. 12-13.

### **III. CONCLUSION**

The Court will grant the Motion to Join and allow Plaintiff to file the proposed second amended complaint, with the following modifications: (A) Plaintiff must exclude Kenneth Bacon and Joseph Dunn from the caption; and (B) Plaintiff must delete the following paragraphs or portions of paragraphs: paragraphs 41-43, 49-51 and paragraph 3 of pages 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not."

Plaintiff must submit an order within seven (7) days.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#17.00** Plaintiff's motion for protective order re disclosure of medical records, Treatment, history and tax returns

Docket 209

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209]. On January 24, 2018, the State Bar opposed the Motion for Records Order [doc. 242], on the basis that discovery is now closed.

On January 11, 2018, the State Bar filed seven motions in limine (the "Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. Plaintiff opposes the Motions in Limine [doc. 233]. Finally, on January 17, 2018, the State Bar filed another protective order (the "Motion for Global Protective Order") [doc. 225], requesting a global protective order to govern this adversary proceeding. On January 24, 2018, Plaintiff filed a response to the Motion for Global Protective Order [doc. 244].

## **II. ANALYSIS**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004).

"Broad allegations of harm, unsubstantiated by specific examples or articulated

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992) (citing *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986)). Rather, "[t]he party opposing disclosure has the burden of proving 'good cause,' which requires a showing 'that specific prejudice or harm will result' if the protective order is not granted." *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir.2003)).

***A. Whether Plaintiff's Medical Records and Tax Returns Should be Sealed***

Although there is generally a "strong presumption of access to judicial records," the Ninth Circuit Court of Appeals has "carved out an exception to the presumption of access to judicial records for a *sealed discovery document* [attached] to a *non-dispositive* motion, such that the usual presumption of the public's right of access is rebutted." *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (internal quotations omitted) (emphasis in *Kamakana*).

Regarding medical records, "courts have consistently granted protective orders that prevent disclosure of many types of information, such as... medical and psychiatric records confidential under state law..." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002); *see also* 45 C.F.R. § 164.508 (prohibiting disclosure of confidential medical information); Cal. Civ. Code §§ 56 et seq. (same under California law); *and Williams v. Nevada Dep't of Corr.*, 2014 WL 3734287, at \*1–2 (D. Nev. Jul. 29, 2014) (holding that "the need to protect medical privacy has qualified as a compelling reason for sealing records" even in connection with dispositive motions). Pursuant to these authorities, there is good cause to seal Plaintiff's medical records and information.

Courts have also found that litigants may seal their tax returns. *See, e.g., Palaniappan v. Norton Health Sound Corp.*, 2012 WL 13032959, at \*3 (D. Alaska Mar. 7, 2012) ("As a matter of public policy, discovery of tax returns and other sensitive financial information is disfavored."); *Ross v. Bar None Enterprises, Inc.*, 2014 WL 2700901, at \*2 (E.D. Cal. June 13, 2014); *and Moskowitz v. Superior Court*, 137 Cal.App.3d 313, 315 (Ct. App. 1982) ("Personal financial information comes within the zone of privacy protected by article I, section 1 of the California Constitution."). In accordance with these authorities, there is also good cause to seal Plaintiff's tax

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

returns. As a result, the Court will enter a protective order with the modifications detailed below. The Court will not sanction Plaintiff in accordance with Local Bankruptcy Rule 7026-1(c), on the basis that Plaintiff noted in her declaration that the parties were unable to reach a stipulation regarding the protective order.

***B. The Form of Plaintiff's Proposed Protective Order***

The State Bar objects to Plaintiff's proposed protective order [doc. 242, Exhibit A] on four bases. First, the State Bar asserts that the Court should enter a blanket protective order instead of limiting Plaintiff's proposed protective order to her medical records and tax returns. The Court has addressed why it will not enter a blanket protective order in its tentative ruling on the Motion for Global Protective Order [Cal #19].

Next, the State Bar disputes the language in the proposed protective order that states that "the medical records to be produced and the testimony to be given by Dr. Paul Benson, shall be limited to the emotional distress and related damages caused by [Plaintiff] by the State Bar and its agents in this action." Proposed Protective Order, ¶ 1. The Court will strike this language for two reasons: (A) first, the language drafted by Plaintiff implies that the State Bar caused Plaintiff's emotional distress damages, which is a legal conclusion to be made by the Court; and (B) second, Plaintiff has not provided any legal argument as to why certain documents or testimony should be withheld from the State Bar (as opposed to sealed). The Court cannot assess whether specific demands for production of documents or specific questions asked at a deposition are beyond the scope of discovery or privileged without having access to those demands and/or questions.

Third, the State Bar requests that the Court include paralegals and clerical and secretarial staff employed by the State Bar's counsel as "qualified persons" to whom confidential disclosures may be made. Proposed Protective Order, ¶ 6. As it stands, the proposed protective order includes three attorneys from the State Bar, experts/consultants retained by the State Bar, court reports and "any other person as to whom the parties agree in writing." *Id.* The Court will include the designated counsel's staff as "qualified persons" for purposes of the protective order.

Finally, the State Bar disputes the liquidating damages clause in Plaintiff's proposed protective order, through which Plaintiff is requesting \$10,000 per violation of the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

protective order. Plaintiff has not presented legal authority regarding whether a liquidated damages clause is appropriate in this case or whether \$10,000 per violation is an appropriate amount of damages if the State Bar violates the protective order. Courts have been hesitant to include liquidated damages clauses in protective orders. As explained by one court:

This Court has broad authority to fashion a protective order that serves the interests of the parties and the administration of justice. Fed.R.Civ.P. 26(c). To be sure, there is also non-binding caselaw indicating that other courts have, on a rare occasion or two, hinted that confidentiality orders might include liquidated damages provisions in the event of a breach. *See Wendt v. Walden Univ., Inc.*, 1996 WL 84668, at \*3 (D.Minn.1996) (unpub.op.); *cf. Denison v. Oregon*, 211 F.R.D. 408, 410 (D.Or.2002).

Those authorities provide scant support for Defendants' position since there is no case that is squarely and expressly on point; in fact, the case most favorable to Defendants, and the one cited in their reply brief, only goes so far as to conclude that the parties might agree to include a liquidated damages provision in a proposed order. *Wendt, supra*. Defendants have not cited-nor has this Court found-any case in which a valid and binding confidentiality order requires the imposition of liquidated damages without regard to the circumstances surrounding the breach, to say nothing of a confidentiality order that sets a stiffer penalty for one party's breach in order to ensure that both parties are similarly deterred from committing an unauthorized disclosure.

The record is devoid of any indication (1) that SCEA is particularly inclined to flout an Order of this Court; (2) that this Court lacks the enforcement authority to appropriately penalize a breach of the confidentiality order by SCEA; or (3) that this Court cannot fashion adequate sanctions to deter future violations. It is simply not necessary at the present juncture to replace the Court's flexibility to address either party's non-compliance of a Court Order by examining the surrounding circumstances on a case-by-case basis with a liquidated damages provision.

*Sony Computer Entm't Am., Inc. v. NASA Elecs. Corp.*, 249 F.R.D. 378, 381 (S.D. Fla. 2008); *see also Perinatal Med. Grp. Inc. v. Children's Hosp. Cent. California Inc.*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

2011 WL 1833026, at \*4 n.1 (E.D. Cal. May 12, 2011) ("The Court and the parties to this motion had considered providing liquidated damages for a violation of the Stipulated Protective Order. However, the parties were unable to reach an agreement as to the appropriate amount of such damages. The Court does not have evidence before it at this time to enable it to determine reasonable damages. If necessary, in the event there is a breach, an appropriate measure of sanctions to compensate Community can be determined.")

Here, Plaintiff has not provided an analysis as to why a liquidated damages clause is necessary and has not supported her calculation of \$10,000 in damages per violation. If the State Bar violates the protective order, the Court will calculate an appropriate amount of sanctions at that time. The Court will strike the liquidated damages clause from the protective order.

**III. CONCLUSION**

The Court will enter a protective order requiring the parties to seal Plaintiff's medical records and tax returns and to mark as confidential testimony regarding these topics. The Court will modify the language from Plaintiff's proposed protective order as outlined above.

The Court will prepare an order based on Plaintiff's proposed order.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**  
Kenneth E. Bacon

**Chapter 7**

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#18.00** Defendant's motion in limine to exclude certain evidence  
and for orders establishing certain facts at trial

Docket 213

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine (the "Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. Plaintiff opposes the Motions in Limine [doc. 233]. Finally, on January 17, 2018, the State Bar filed another protective order, requesting a global protective order to govern this adversary proceeding (the "Motion for Global Protective Order") [doc. 225].

## **II. ANALYSIS**

### ***A. Motions in Limine Generally***

"Although the Federal Rules of Evidence...do not explicitly authorize a motion in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

limine, the Supreme Court has held that trial judges are authorized to rule on motions in limine pursuant to their authority to manage trials." *Goodman v. Las Vegas Metro. Police Dep't*, 963 F. Supp. 2d 1036, 1046 (D. Nev. 2013) (citing to *Luce v. United States*, 469 U.S. 38, 41 n. 4 (1984)). "A motion in limine is a request for the court's guidance concerning an evidentiary question. Judges have broad discretion when ruling on motions in limine." *Id.*

"A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area. In the case of a jury trial, a court's ruling "at the outset" gives counsel advance notice of the scope of certain evidence so that admissibility is settled before attempted use of the evidence before the jury. Because the judge rules on this evidentiary motion, in the case of a bench trial, a threshold ruling is generally superfluous." *United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009). "A motion in limine is not the proper vehicle for seeking a dispositive ruling on a claim, particularly after the deadline for filing such motions has passed." *Hana Fin., Inc. v. Hana Bank*, 735 F.3d 1158, 1162 n. 4 (9th Cir. 2013) *cert. granted*, 134 S. Ct. 2842, 189 (2014) and *aff'd*, 135 S. Ct. 907 (2015); *see also Schagene v. Mabus*, 2015 WL 251197, at \*1 (S.D. Cal. Jan. 20, 2015) ("[A] motion *in limine* should not be used to resolve factual disputes or weigh evidence.").

"In light of their limited purpose, motions in limine should not be used to resolve whether certain claims should survive. Rather, parties should target their arguments to demonstrating why certain items or categories of evidence should (or should not) be introduced at trial, and direct the trial judge to specific evidence in the record that would favor or disfavor the introduction of those particular items or categories of evidence." *Strickholm v. Evangelical Lutheran Good Samaritan Soc.*, 2013 WL 788096, at \*4 (D. Idaho Mar. 1, 2013).

"To exclude evidence on a motion in limine the evidence must be inadmissible on all potential grounds. Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context. This is because although rulings on motions in limine may save time, costs, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence." *Goodman*, at 1047 (internal citations omitted). "[I]n limine rulings are not binding on the trial judge, and the judge may always change his mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n. 3 (2000).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

"Denial of a motion in limine does not necessarily mean that all evidence contemplated by the motion will be admitted to trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded." *Ellsworth v. Prison Health Servs. Inc.*, 2014 WL 1493018, at \*2 (D. Ariz. Apr. 16, 2014).

As a preliminary matter, the Court has not set trial in this adversary proceeding. In fact, the Court is extending the deadlines previously set in this matter, including the discovery cutoff date, such that discovery is not even complete. As such, the Motions in Limine are premature. If the State Bar believes Plaintiff has not provided documents or information to the State Bar, the State Bar may file a motion to compel. Nevertheless, the Court will discuss each of the Motions in Limine below.

***B. Motion in Limine No. 1***

The State Bar requests an order barring Plaintiff from introducing any documents except those identified in Plaintiff's initial disclosures. Plaintiff made her initial disclosures on October 2, 2017, but, according to the State Bar, did not include any exhibits regarding her calculation of damages. According to the State Bar, Plaintiff has failed to identify a single document on which her computation of damages is based. In her opposition, Plaintiff provides that she intends to use oral testimony to establish damages. In addition, Plaintiff will provide her 2009 tax returns and medical records if the Court enters a protective order. As for the remaining tax returns, Plaintiff asserts the State Bar already has the documents.

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(a)(1)(A), as incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 7026, a party must, without awaiting a discovery request, provide to other parties:

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

claims or defenses, unless the use would be solely for impeachment

Pursuant to Rule 26(a)(2), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence. Pursuant to Rule 26(e)(1), a party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

- (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (B) as ordered by the court.

Under Rule 37(c), as incorporated by FRBP 7037—

- (1) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
  - (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
  - (B) may inform the jury of the party's failure; and
  - (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

Other sanctions provided by Rule 37(b)(2)(A) include—

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

- in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

"The party facing sanctions bears the burden of proving that its failure to disclose the required information was substantially justified or is harmless." *R & R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d 1240, 1246 (9th Cir. 2012). "[I]n the ordinary case, violations of Rule 26 may warrant evidence preclusion. Yet evidence preclusion is, or at least can be, a 'harsh' sanction." *Id.*, at 1247 (quoting *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)). If a sanction under the Rules amounts to a dismissal of a claim, "the district court [is] required to consider whether the claimed noncompliance involved willfulness, fault, or bad faith, and also to consider the availability of lesser sanctions." *Id.*

Here, Plaintiff asserts that she will use witness testimony to establish damages, and that, aside from certain medical records and tax returns with respect to which Plaintiff has filed a motion for a protective order, the State Bar has all other documents in their possession. First, Plaintiff filed her motion for a protective order before the State Bar filed the Motions in Limine. In other words, Plaintiff requested that the Court seal her medical records and tax returns before she turns them over to the State Bar, and only *after* this request did the State Bar request that Plaintiff be barred from using these documents as evidence. Because Plaintiff intends to provide these documents to the State Bar once the Court enters a protective order, the Court will not prohibit Plaintiff from using these documents at trial.

If Plaintiff does not provide all of the relevant documents in her possession to the State Bar after the Court enters a protective order, the State Bar may file a motion to compel. The State Bar has already moved for an order compelling Plaintiff to attend a continued deposition. If the State Bar does not receive all of the information and documents it needs after discovery closes, the State Bar may then move to bar Plaintiff from using evidence (other than impeachment evidence) she did not disclose to the State Bar during discovery.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Finally, even if the Court were to entertain the Motions in Limine at this time, barring Plaintiff from introducing any evidence on damages would essentially result in dismissal of this adversary proceeding. In accordance with the authorities above, this is too harsh a result.

***C. Motion in Limine No. 2***

The State Bar asks the Court to bar Plaintiff from introducing any evidence at trial bearing on the computation of Plaintiff's economic damages because Plaintiff has not provided any documents evidencing the nature and extent of her injuries. As to this request, the State Bar notes that Plaintiff did not file a motion for protective order until after the discovery cutoff. However, the State Bar filed its own motion for protective order after the discovery cutoff date. In addition, Plaintiff has moved to extend the discovery cutoff date.

As to the remaining arguments regarding Plaintiff's production of documents, the analysis above applies here as well. The State Bar should have brought a motion to compel instead of requesting what will amount to a dismissal of this action.

***D. Motion in Limine No. 3***

The State Bar asks the Court to bar Plaintiff from introducing any evidence regarding any diagnosis, treatment or symptoms related to her emotional distress claim. The State Bar asserts that Plaintiff refused to sign the release and protective order to allow Plaintiff's doctor, Dr. Paul Benson, to testify at his scheduled deposition. However, Plaintiff did file a motion for protective order to obtain a protective order from this Court. Upon entry of that protective order, the State Bar may move forward with its deposition of Dr. Benson.

***E. Motion in Limine No. 4***

The State Bar requests that the Court bar Plaintiff from testifying at trial or, in the alternative, to limit Plaintiff's testimony to the subjects covered during Plaintiff's October 10, 2017 deposition. The State Bar asserts that Plaintiff has failed to disclose herself as a witness pursuant to Rule 26(a). First, the State Bar has not cited any authority that provides that parties have to list themselves as witnesses in their initial

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

disclosures. The scarce authority on this subject appears to indicate that a party does not necessarily have to list itself as a percipient witness in its Rule 26(a) initial disclosures. *See Murray v. Birmingham Bd. of Educ.*, 172 F.Supp.3d 1225, 1232 (N.D. Ala. 2016) ("[O]bviously, the parties do not have to disclose their own names as potential witnesses."); and *Christian v. Vought Aircraft Indus., Inc.*, 2010 WL 4065482, at \*5 (E.D.N.C. Oct. 15, 2010) ("Plaintiff's failure to disclose himself as a witness does not, without more, foreclose the court's consideration of his statements. Plaintiff's failure was harmless where defendants knew that he was likely to have discoverable information with respect to his...claim, *see* [Rule] 26(a)(1)(A)(i), and indeed had the opportunity to depose plaintiff."). Under these authorities, it is debatable whether Plaintiff had to disclose herself as a witness with discoverable information; the State Bar already knew that Plaintiff is a witness with discoverable information.

Even if Plaintiff was required to disclose herself as a witness under Rule 26(a), barring or limiting Plaintiff's testimony at trial when the parties are still in the discovery phase (and, with the possibility that Plaintiff may yet amend the FAC to add additional parties) is unwarranted and would be an extremely harsh sanction that will amount to dismissal of this proceeding. The Court will deny this request.

***F. Motion in Limine No. 5***

The State Bar asks the Court to prohibit Plaintiff from introducing any evidence withheld from discovery. The arguments in this section largely repeat the arguments from above. It does not appear the State Bar is referring to any other documents or information (aside from the documents and information covered above) withheld by Plaintiff. As such, the analysis above applies here and the Court will also deny this request.

***G. Motion in Limine No. 6***

The State Bar requests an order establishing, for purposes of this action, that Plaintiff has received the maximum amount of disability insurance benefits allowed by the State of California between August 2013 and August 2014. The State Bar argues that because Plaintiff failed to provide specific information about disability payments received by Plaintiff, if any, the Court should deem that Plaintiff received the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 07, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

maximum amount of disability.

Again, the appropriate response to a lack of disclosure by Plaintiff would have been for the State Bar to file a motion to compel. At this time, before discovery is complete, it is premature to make any determination regarding Plaintiff's disability payments or lack thereof. Even if discovery were complete and Plaintiff had not provided information about her disability payments, the State Bar did not provide any authority that would compel this Court to enter an order establishing that Plaintiff received the maximum amount of disability payments for one year as opposed to sanctioning Plaintiff in other ways.

***H. Motion in Limine No. 7***

As their final request, the State Bar asks the Court to enter an order establishing, for purposes of this action, that any and all emotional distress suffered by Plaintiff is the result of the failure and dissolution of Plaintiff's law firm. Through this request, the State Bar is essentially requesting that the Court make a causation determination before discovery is complete. These arguments are appropriately made at trial or through a motion for summary judgment, not through premature motions in limine. In addition, it appears the State Bar bases this request on Plaintiff's failure to provide medical records. However, Plaintiff has agreed to provide the medical records upon the entry of a protective order. This request will also be denied.

**III. CONCLUSION**

The Court will deny the Motions in Limine.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Joseph Dunn

Marc A Shapp

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#19.00** Defendant's motion for a protective order governing exchange of confidential information; request for sanctions

Docket 225

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine (the "Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. Plaintiff opposes the Motions in Limine [doc. 233]. Finally, on January 17, 2018, the State Bar filed another protective order (the "Motion for Global Protective Order") [doc. 225], requesting a global protective order to govern this adversary proceeding. On January 24, 2018, Plaintiff filed a response to the Motion for Global Protective Order [doc. 244].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004).

"Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992) (citing *Cipollone v. Liggett Group, Inc.*, 785 F.2d

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

1108, 1121 (3rd Cir. 1986)). Rather, "[t]he party opposing disclosure has the burden of proving 'good cause,' which requires a showing 'that specific prejudice or harm will result' if the protective order is not granted." *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir.2003)).

To the extent the State Bar is seeking a protective order related to Plaintiff's "Document Demands Numbers 16-18," the request is moot because Plaintiff asserts in her response that she is not seeking production of these documents.

The State Bar also requests entry of a global protective order governing the exchange of all confidential information in this adversary proceeding. It is unclear if Plaintiff is willing to stipulate to entry of a global protective order, or if Plaintiff agrees to all of the terms in the State Bar's proposed global protective order [doc. 228].

Unless Plaintiff will stipulate to the entry of a global protective order, the Court will deny the Motion for Global Protective Order.

Normally, a blanket protective order requires that counsel for a producing party review the information to be disclosed and designate the information it believes, in good faith, is confidential or otherwise entitled to protection. The designated information is thereafter entitled to the protections afforded by the blanket protective order unless the designation is objected to by an opposing party. Judicial review of a party's designation as confidential occurs only when there is such an objection which the parties cannot resolve by agreement.

*Gillard v. Boulder Valley Sch. Dist. Re.-2*, 196 F.R.D. 382, 386 (D. Colo. 2000). "Blanket protective orders routinely are approved by courts in civil cases, frequently on the stipulated request of the parties. The agreement of all parties is not required for the entry of a blanket protective order, however, so long as certain conditions are met." *Id.* Those conditions include:

First, a party must make some threshold showing of good cause to believe that discovery will involve confidential or protected information. This may be done on a generalized as opposed to a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

document-by-document basis. Moreover, even though a blanket protective order permits all documents to be designated as confidential, a party must agree to only invoke the designation in good faith. After receiving documents, the opposing party has the right to contest those documents which it believes not to be confidential. At this stage, the party seeking the protection shoulders the burden of proof in justifying retaining the confidentiality designation. Thus, the burden of proving confidentiality never shifts from the party asserting that claim—only the burden of raising that issue.

*Id.* (quoting *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Grp., Inc.*, 121 F.R.D. 264, 268 (M.D.N.C. 1988)).

Here, the State Bar has not made a threshold showing of good cause. The State Bar asserts only that its request for a global protective order is reasonable and that the State Bar cannot produce "certain documents" unless a global protective order is in place. Again, to the extent the State Bar is referring to the Document Demands Numbers 16-18, it appears Plaintiff is no longer requesting these documents. The State Bar has not informed the Court why any document the State Bar intends to produce is confidential. In *Gillard*, for example, the defendants noted that discovery would involve the disclosure of confidential information such as "personnel records, school records with personally identifiable information about students, and juvenile delinquency records, all of which normally are required to be maintained confidentially." *Gillard*, 195 F.R.D. at 386. The State Bar has not indicated it intends to produce any such information.

Moreover, an important function of blanket protective orders is to "serve the interests of a just, speedy, and less expensive determination of complex disputes by alleviating the need for and delay occasioned by extensive and repeated judicial intervention." *Id.* When a court enters a blanket protective order, the parties agree to first attempt to resolve a dispute over confidentiality before seeking judicial intervention. Here, the history between the parties reflects that the parties are unable to resolve discovery disputes without intervention by the Court. As such, entry of a blanket protective order is futile, especially if Plaintiff is not stipulating to entry of such an order. *See also San Jose Mercury News, Inc. v. U.S. Dist. Court--N. Dist.*, 187 F.3d 1096, 1103 (9th Cir. 1999) ("[B]lanket [protective] orders are inherently subject to challenge and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

modification, as the party resisting disclosure generally has not made a particularized showing of good cause with respect to any individual document."). Finally, because the Court will deny the Motion for Global Protective Order, the Court will not sanction Plaintiff.

**III. CONCLUSION**

The Court will deny the Motion for Global Protective Order.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

10:30 AM

**1:13-17509 Peter Medvedev and Rita Medvedev**

**Chapter 11**

**#1.00** First and final application of Caceres & Shamash, LLP for approval and payment of compensation and reimbursement of expenses as reorganization counsel for the debtors

Docket 214

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(J), the applicant has not filed a declaration from the debtors indicating that the debtors have reviewed the fee application and have no objection to it.

**Party Information**

**Debtor(s):**

Peter Medvedev

Represented By  
Joseph Caceres

**Joint Debtor(s):**

Rita Medvedev

Represented By  
Joseph Caceres



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#2.00** First interim application for compensation and reimbursement of expenses of Michael Jay Berger

Docket 89

**Tentative Ruling:**

Continue hearing to **March 8, 2018 at 10:30 a.m.**

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(A)(iii), applicant has not disclosed the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. No later than **March 1, 2018**, the debtor must file a declaration discussing and demonstrating its ability to pay the approved fees and expenses.

Appearances on February 8, 2018 are excused.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#3.00** Status conference re chapter 11 case

fr. 5/25/17; 9/7/17; 10/19/17; 12/21/17

Docket 1

**Tentative Ruling:**

On January 30, 2018, the Official Committee of Unsecured Creditors (the "Committee") filed a liquidating chapter 11 plan and proposed disclosure statement [docs. 168, 169]. The Court has set a hearing on the approval of the Committee's proposed disclosure statement for **March 29, 2018 at 1:00 p.m. No later than February 15, 2018**, the Committee must serve notice of the disclosure statement hearing.

The Court will continue this status conference to **March 29, 2018 at 1:00 p.m.**, to coincide with the hearing on the approval of the Committee's proposed disclosure statement. The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on February 8, 2018 are excused.

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#4.00** Disclosure statement hearing in support of plan of reorganization

Docket 79

**Tentative Ruling:**

The Court will continue the hearing to **March 29, 2018 at 2:00 p.m. No later than February 15, 2018**, the debtor must file and serve notice of the continued hearing, and the deadline to file objections 14 days before the continued hearing, and correct the following service error:

The debtor did not serve notice of the hearing on the adequacy of the disclosure statement on the Internal Revenue Service (the "IRS") in accordance with Local Bankruptcy Rule ("LBR") 2002-2(c) and Federal Rule of Bankruptcy Procedure 5003 (e) and use the addresses set forth in the "Register of Federal and State Government Unit Addresses [F.R.B.P. 5003(e)]" listed in the Court Manual under Appendix D, available on the Court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Rules & Procedures." In accordance with the foregoing, notice to the IRS must be served at each of the following addresses:

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

United States Attorney's Office  
Federal Building, Room 7516  
300 North Los Angeles Street  
Los Angeles, CA 90012

United States Department of Justice  
Ben Franklin Station  
P. O. Box 683  
Washington, DC 20044

Appearances are excused on February 8, 2018.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Ikechukwu Mgbeke**

**Chapter 11**

**Party Information**

**Debtor(s):**

Ikechukwu Mgbeke

Represented By

Anthony Obehi Egbase

Clarissa D Cu

Crystle J Lindsey

W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 6/22/17; 7/6/17; 7/13/17; 8/10/17; 9/21/17; 10/5/17; 12/21/17

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **March 29, 2018 at 2:00 p.m.**, to be held in connection with the continued hearing on the adequacy of the debtor's proposed disclosure statement.

Appearances are excused on February 8, 2018.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17

Docket 1

**Tentative Ruling:**

How are the debtors (in the jointly administered chapter 11 cases) going to fund the \$10,000 postpetition retainer to Jeffrey S. Shinbrot, APLC, as their new bankruptcy counsel?

When do the debtors anticipate filing the contemplated motion to approve the sale of the debtors' assets?

If the debtors' sale of assets to Joyfully Gifted, LLC is consummated, what is the anticipated treatment of the debtors' nonpriority unsecured creditors under a chapter 11 plan? How are sale proceeds going to be allocated among the different estates?

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

---

1:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#8.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#9.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#10.00** Status conference re chapter 11 case

fr. 9/7/17; 10/5/17

Docket 1

**Tentative Ruling:**

Pursuant to the *Order Granting Ex Parte Motion to Extend Time to File a Chapter 11 Plan of Reorganization and Disclosure Statement* [doc. 97] , the Court has extended the deadline by which the debtor must file a proposed chapter 11 plan and related disclosure statement to March 1, 2018. Consequently, the Court will continue this status conference to **1:00 p.m. on March 15, 2018.**

If the debtor has not timely filed a proposed chapter 11 plan and related disclosure statement by the new deadline, the debtor must file and serve a status report, **supported by evidence**, no later than **March 1, 2018.**

Appearances are excused on February 8, 2018.

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13142 Amir Elosseini**

**Chapter 11**

**#11.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **May 1, 2018.**

Deadline to mail notice of Bar Date: **March 1, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **July 30, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on August 16, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor (s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**Debtor(s):**

Amir Elosseini

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Amir Elosseini**

Kevin Tang

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

2:00 PM

**1:13-17509 Peter Medvedev and Rita Medvedev**

**Chapter 11**

**#12.00** Debtors' motion for final decree and order closing chapter 11 case  
and for order granting discharge

Docket 216

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

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

**Debtor(s):**

Peter Medvedev

Represented By  
Joseph Caceres

**Joint Debtor(s):**

Rita Medvedev

Represented By  
Joseph Caceres

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14742 BaseNet, LLC**

**Chapter 7**

**#13.00** Chapter 7 Trustee's Motion Objecting to Claim of Jack N. Rudel,  
as Trustee of the Arh Trust (Claim No. 18-1)

fr. 11/2/17; 11/9/17

Docket 197

**Tentative Ruling:**

The Court will continue this hearing to **2:00 p.m. on February 15, 2018.**

Appearances are excused on February 8, 2018.

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

**Debtor(s):**

BaseNet, LLC

Represented By  
John D Faucher  
Edward P Kerns

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 08, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#14.00** Debtor's motion for order authorizing use of cash collateral  
as of the petition date

fr. 1/11/18

Docket 38

**Tentative Ruling:**

On February 6, 2018, the Court entered an order approving the appointment of a chapter 11 trustee (the "Trustee") [doc. 107]. Given that the debtor has now properly served all lienholders that have an interest in the subject properties, and no opposition to the motion has been filed, the Court will authorize the Trustee to use cash collateral generated from the subject properties, based on the budget submitted by the debtor.

The Trustee must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10629 Jonas B. Magcase**

**Chapter 13**

**#0.01 Chapter 13 confirmation hearing**

Docket 18

**Tentative Ruling:**

Sustain objection of Ally Financial, Inc. to confirmation.

**I. BACKGROUND**

On March 16, 2014, Jonas B. Magcase (the "Debtor") and Ally Financial Inc. ("Creditor") entered into a motor vehicle lease agreement (the "Lease") [doc. 30, Exh. A]. Under the Lease, the Debtor was obligated to pay Creditor \$625.76 a month for thirty-nine months.

On March 13, 2017, the Debtor filed a chapter 13 petition and a chapter 13 plan [docs. 1, 2]. On May 16, 2017, the Lease expired. Under the Lease, the Debtor had the option to buy the vehicle for a lump-sum payment of \$31,964.00, plus fees and costs. The Debtor did not exercise this option.

On May 22, 2017, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 18]. Through the Plan, the Debtor proposes to purchase the vehicle for \$31,964.80 payable at 5% interest with a monthly payment of \$774.60.

On September 13, 2017, Creditor filed an objection to confirmation of the Plan (the "Objection") [doc. 23]. On November 21, 2017, the Debtor filed a response to the Objection [doc. 29]. On February 6, 2018, Creditor filed a reply [doc. 30].

**II. DISCUSSION**

Pursuant to 11 U.S.C. § 105(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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Jonas B. Magcase**

**Chapter 13**

determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Pursuant to 11 U.S.C. § 365(c)(2):

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

...

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor;

In support of his Plan proposal, the Debtor cites *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The Debtor's reliance on *Till* is misplaced. "*Till*, which applies to both consensual and nonconsensual liens, instructs the bankruptcy courts, when dealing with the 'cram down' provision of § 1325(a)(5)(B)(ii), to set an interest rate by increasing the national prime rate by an appropriate amount to account for the increased risk of default for that particular creditor (referred to as the 'prime-plus' method)." *In re Jones*, 368 B.R. 602, 605 (Bankr. S.D. Tex. 2007).

"'Cram down' refers to the power of a bankruptcy court to force a creditor to accept less than or something different from what that creditor was originally entitled to receive from the debtor." *In re Weske*, 203 B.R. 694, 695 (Bankr. E.D. Wis. 1996), *abrogation on other grounds recognized by In re Pokrzywinski*, 311 B.R. 846 (Bankr. E.D. Wis. 2004). "A plan which alters the method and time of payment of the purchase option from what had been set forth in the lease and which is not consented to by the lessor is a form of cram down." *Id.*

At least one court has held that a court's "cram down" power does not apply to a lease agreement to be assumed by a chapter 13 debtor. In *In re Weske*, the debtors sought to assume an unexpired vehicle lease agreement under their chapter 13 plan. The lease agreement at issue contained an option to purchase the vehicle for a lump sum payment. The debtors' chapter 13 plan proposed to pay the option price in monthly installments with interest over the 60-month plan period. 203 B.R. at 695. The court found that the lessor was not a holder of a secured claim subject to modification under 11 U.S.C. §§ 1322(b) or 1325. In addition, the court noted that § 1322(b)(7) allows

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jonas B. Magcase**

**Chapter 13**

chapter 13 debtors to assume unexpired leases subject to § 365, but the lease terms may not be modified. *Id.* at 695–96. Accordingly, the court sustained the lessor’s objection to the debtors’ plan.

Here, the Lease calls for a lump-sum payment of \$31,964.00 plus fees and costs at the end of the lease term, which expired on May 16, 2017. Like the debtors in *In re Weske*, the Debtor is proposing in the Plan to exercise the purchase option in the Lease by paying monthly payments over time with interest. The Creditor is a lessor, rather than a secured claimant whose claim may be modified pursuant to *Till*. Pursuant to § 1322(b)(7), a debtor cannot assume an unexpired lease and modify its terms. However, the Lease at issue here has expired. The Debtor has not addressed whether the expiration of the Lease bars the proposed treatment of the vehicle under the Plan.

In *In re Blackburn*, the court denied confirmation of a chapter 13 plan, in part, because the debtors attempted to finance the residual purchase price of a leased vehicle through their plan, which violated § 365(c). 88 B.R. 273 (Bankr. S.D. Cal. 1988). In relevant part the court noted:

By way of their plan, debtors are attempting to obtain that which the lease agreement does not provide them—financing beyond the stated term of the lease. The lease agreement makes no provision whatever for debtor to finance the residual purchase price of the vehicle upon expiration of the lease term. Debtors’ lease agreement expired by its own terms the day after debtors filed their Chapter 13 petition. According to the terms of the lease, at expiration of the lease, absent purchase of the vehicle, the debtors must return it to Security Pacific.

Inasmuch as debtors’ proposed plan violates the provisions of § 365(c), it cannot be confirmed.

*Id.* at 276.

A similar set of facts arose in *In re Ward*, Case No. 12-60662-13, 2012 WL 2501182 (Bankr. D. Mont. June 28, 2012). The court in *In re Ward* denied the debtor’s proposed plan because the treatment proposed by the debtor was contrary to the terms

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jonas B. Magcase**

**Chapter 13**

of the lease, which expired prepetition. *Id.* at \*3–4.

Here, the Lease expired on May 16, 2017. After the Lease expired, the Debtor had the option of purchasing the vehicle through a lump-sum payment or returning the vehicle to Creditor. The Debtor did neither. Allowing the Debtor to pay the purchase option price through the Plan modifies the terms of the Lease because it provides for a payment over forty-six months rather than a lump-sum. By varying the terms of the Lease, the Debtor is attempting to obtain financing beyond the stated term of the Lease, in violation of §§ 1322(b)(7) and 365(c)(2). Under § 105, the Court does not have discretion to allow the Debtor to pay the purchase price in the Lease through the Plan because §§ 1322(b)(7) and 365(c)(2) bar such treatment of the vehicle.

**III. CONCLUSION**

In light of the foregoing, the Court will sustain the Objection.

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

**Debtor(s):**

Jonas B. Magcase

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:12-13650 William E Morales**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case due to expiration of plan  
fr. 10/3/17; 12/12/17; 1/9/18;

Docket 116

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

William E Morales

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:12-16246 Javier Pezqueda and Blanca Pezqueda**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case due to expiration of plan  
fr. 11/7/17; 12/12/17; 1/9/18;

Docket 63

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Javier Pezqueda

Represented By  
L. Walker Van Antwerp III

**Joint Debtor(s):**

Blanca Pezqueda

Represented By  
L. Walker Van Antwerp III

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:12-17172 Bibliana Lucia Boverly**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case due to expiration of plan

fr. 11/7/17

Docket 87

**Tentative Ruling:**

Deny.

On August 9, 2012, Bibliana Lucia Boverly (the "Debtor") filed a chapter 13 petition. On August 22, 2012, the Debtor filed a chapter 13 plan [doc. 11]. On October 29, 2012, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 19]. On November 29, 2012, the Court entered an order confirming the Plan [doc. 24]. The Plan expired on August 9, 2017.

On October 12, 2017, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the Debtor's case (the "Motion to Dismiss") [doc. 87]. In the Motion to Dismiss, the Trustee argued that the Debtor's case should be dismissed because the plan expired pursuant to its terms, and because a balance of \$2,450 remained to be paid through the Plan.

On October 23, 2017, the Debtor filed an opposition to the Motion to Dismiss (the "Opposition"). In support of the Opposition, the Debtor's counsel stated that the Debtor has made all her Plan payments, in the total amount of \$46,417.39. (Declaration of Richard Garber, ¶ 5.) As of October 23, 2017, the Debtor's balance to pay off her case was \$1,687.33. (*Id.*, ¶ 4.) With additional attorney's fees and trustee's fees to be incurred, the Debtor may require \$2,800 to pay off her plan. (*Id.*, ¶ 13.) It will take four more months for the Debtor to pay off her plan by continuing to make her regular Plan payment of \$729.50. (*Id.*, ¶ 14.)

In support of her position, the Debtor relies on *In re Hill*, 374 B.R. 745 (Bankr. S.D. Cal. 2007). In *In re Hill*, the chapter 13 trustee moved to dismiss two cases on the grounds that they had exceeded 60 months in length. In the both cases, the debtors asked that they be allowed to continue making their plan payments past the 60-month period until their plans were paid off. One debtor asked for 53 additional months, and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**CONT... Bibliana Lucia Bovery**

**Chapter 13**

the other debtor asked for 33 additional months. Neither debtor could increase their income to increase plan payments. The court held that 11 U.S.C. § 1307 does not specify that failure to complete a plan within 60 months is in itself grounds for dismissal. The court noted that the debtors had each agreed to complete their respective plans within 60 months, and that each debtor had materially breached their agreement. Such breach was not mandatory grounds for dismissal, because that the debtors had consistently performed during the 60-month plan period, and that all additional payments were going to pay the chapter 13 trustee fees, unsecured creditors, and the debtors' attorneys' fees.

Here, the facts of the Debtor's case are similar to those in *In re Hill*. The Debtor has made her Plan payments for 60 months, and is willing to make four additional monthly payments to pay the remaining balance of her Plan, which consists solely of Trustee fees and attorney's fees. The four additional months requested by Debtor is a far shorter period than the 53-month and 33-month extensions granted in *In re Hill*.

In light of the foregoing, the Court will deny the Motion to Dismiss.

The Debtor must submit the order within seven (7) days.

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

**Debtor(s):**

Bibliana Lucia Bovery

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18

Docket 52

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:15-10893 Sarkis Derbeshyan**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 12/12/17

Docket 52

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Sarkis Derbeshyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11964 Luis E. SOLIS**

**Chapter 13**

**#48.00** Motion to dismiss case for failure to make plan payments

fr. 12/12/17

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Luis E. SOLIS

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18;

Docket 47

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12848 CARLOS M PERAZA and BLANCA H PERAZA**

**Chapter 13**

**#50.00** Trustee's objection to homestead exemption

Docket 22

**\*\*\* VACATED \*\*\* REASON: Hearing set for 11:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

CARLOS M PERAZA

Represented By  
Laleh Ensafi

**Joint Debtor(s):**

BLANCA H PERAZA

Represented By  
Laleh Ensafi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:12-13650 William E Morales**

**Chapter 13**

**#51.00** Debtor's motion re: objection to claim number 3-1 by claimant Bayview Loan Servicing, LLC., a Servicing Agent for Federal National Mortgage Association, it's Successors and/or Assigns; request claim be disallowed

fr. 11/7/17; 12/12/17; 1/9/18;

Docket 120

**\*\*\* VACATED \*\*\* REASON: voluntary dismissal of motion filed on 1/12/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

William E Morales

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:12-16246 Javier Pezqueda and Blanca Pezqueda**

**Chapter 13**

**#52.00** Order to show cause why debtors' counsel should not be sanctioned for failure to appear at hearing on trustee's motion to dismiss

fr. 1/9/18;

Docket 70

**Tentative Ruling:**

On January 9, 2018, the Court held an initial hearing on this order to show cause ("OSC"). The debtors' counsel appeared as directed. The Court continued the hearing on the OSC to February 13, 2018 to allow the debtors' counsel to lodge an order on the motion to modify the debtors' chapter 13 plan ("Motion to Modify"). On January 12, 2018, the Court entered an order granting the Motion to Modify [doc. 78].

In light of the foregoing, the Court will discharge the OSC.

Appearances on February 13, 2018 are excused.

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

**Debtor(s):**

Javier Pezqueda

Represented By  
L. Walker Van Antwerp III

**Joint Debtor(s):**

Blanca Pezqueda

Represented By  
L. Walker Van Antwerp III

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-13194 Arturo Zamora Ballestros and Daisy G. Salvatierra**

**Chapter 13**

**#53.00** Application for final fees and costs for David A Tilem

Docket 102

**Tentative Ruling:**

Continue hearing to **March 13, 2018 at 11:30 a.m.**

**No later than February 27, 2018**, applicant must submit a supplemental declaration attaching billing statements that include only fees and costs incurred after October 31, 2016 (the end of the period covered by the second fee application). The supplemental declaration must clearly state the total amount of fees and costs previously approved and disapproved, and the total amount of fees and costs incurred after October 31, 2016. The pending application contains unnecessary billing time entries and costs from time periods already covered by the first and second fee applications.

In addition, applicant must explain the following discrepancies in its application. The pending application seeks approval of \$26,166.25 in total fees. However, this amount does not match the sum of the fees requested in the prior fee applications and the new fees incurred during the period covered by the pending Application, which equals \$25,248.75.

	<b>Fees Requested</b>
<b>1<sup>st</sup> Fee App</b>	\$8,386.25
<b>2<sup>nd</sup> Fee App</b>	\$8,727.50
<b>Final Fee App</b>	\$8,135.00
	<b>\$25,248.75</b>

Applicant also appears to be requesting approval of fees that were previously disapproved by the Court in its order on the second fee application.

Appearances on February 13, 2018 are excused.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Arturo Zamora Ballestros and Daisy G. Salvatierra**

**Chapter 13**

**Debtor(s):**

Arturo Zamora Ballestros

Represented By  
Sylvia Lew  
David A Tilem

**Joint Debtor(s):**

Daisy G. Salvatierra

Represented By  
Sylvia Lew  
David A Tilem

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-13450 Jacqueline A. Owuor**

**Chapter 13**

**#54.00** Motion for authority to incur debt to purchase a home based on incentives by employer to move to Plano Texas

Docket 49

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Jacqueline A. Owuor

Represented By  
Mufthiha Sabaratnam

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-13450 Jacqueline A. Owuor**

**Chapter 13**

**#55.00** Motion for authority to incur debt (personal property)

Docket 51

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jacqueline A. Owuor

Represented By  
Mufthiha Sabaratnam

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#56.00** Motion for order disallowing in part the amended proof of claim of Citizens Bank NA F/K/A RBS Citizens NA [Claim No.4-4]

Docket 73

**Tentative Ruling:**

**Unless an appearance is made at the hearing on February 13, 2018, the hearing is continued to April 10, 2018 at 11:30 a.m., and the debtors must cure the service deficiencies noted below on or before March 11, 2018.**

The debtors did not properly serve the objection on claimant. Claimant is an insured depository institution. The debtors served claimant at its address listed on proof of claim 4-4, pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 3007(a). Local Bankruptcy Rule ("LBR") 3007-1(b)(2) provides that "[t]he claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules."

Although claimant was served at the address listed on its proof of claim, the debtors did not address service to an officer of the institution, as required by FRBP 7004(h). In addition, a tracking number is provided on the proof of service, but it is unclear if the tracking number is a certified mail tracking number. Claimant's address is listed under "Served by United States Mail" without any indication that service was effectuated via certified mail.

Aside from the service issues, it is unclear why the debtors are seeking the requested relief. In the objection, the debtors argue that the unsecured portion of the claim was discharged in their first bankruptcy case. According to the debtors, the debtors seek the disallowance of the unsecured portion of the claim in order for the debtors to file a motion to modify their plan, in response to the chapter 13 trustee's motion to dismiss. Based on the motion to dismiss, the debtors are delinquent on plan payments in the amount of \$7,014.00.

The confirmed chapter 13 plan provides for 0% to be paid to general unsecured creditors, including the \$251,143.50 unsecured portion of the claim at issue. It is not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Yuanis Newton Heathington and Celestine Lejune Chapter 13**

clear why disallowing the unsecured portion of this claim would effect the debtors' ability to make their plan payments, or their proposed motion to modify their plan.

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

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:15-10429 Arshak Mnatsakanian and Anush Melkumyan**

**Chapter 13**

**#57.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w)  
to modify plan or suspend plan payments

Docket 65

**Tentative Ruling:**

Grant.

On October 31, 2017, the debtors filed a Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments (the "Motion") [doc. 65]. On November 16, 2017, the chapter 13 trustee filed her comments on the Motion [doc. 68].

On December 21, 2017, the Court entered an order setting a hearing on the Motion and directing the debtors to file a supplemental declaration with evidence that they had submitted their 2015 and 2016 tax returns to the chapter 13 trustee no later than January 12, 2018 [doc.74]. On January 3, 2018, the debtors filed their supplemental declaration with the required evidence [doc. 77].

The debtors must submit an order on their Motion within seven (7) days.

Appearances on February 13, 2018 are excused.

**Party Information**

**Debtor(s):**

Arshak Mnatsakanian

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Anush Melkumyan

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Arshak Mnatsakanian and Anush Melkumyan**

**Chapter 13**

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Tuesday, February 13, 2018

Hearing Room 301

11:30 AM

1:15-13149 Brian Patrick Sullivan

Chapter 13

#58.00 Motion to reassign related case of Brian Sullivan from  
the Northern Division to the San Fernando Valley Division

Docket 70

\*\*\* VACATED \*\*\* REASON: Order granting motion signed 1/19/2018

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Brian Patrick Sullivan

Represented By  
Alan W Forsley  
Leslie A Tos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12703 Karen Basmagy**

**Chapter 13**

**#59.00** Trustee's objection to the debtor's claim of exemption

Docket 18

**Tentative Ruling:**

Sustain objection and disallow claims of exemption based on California Code of Civil Procedure (“C.C.P”) § 704.950 in a total amount of \$71,842.19 of equity in one checking account, two savings accounts, funds withheld for levy by Los Angeles Sheriff Office, and a security deposit for rent, as set forth in the debtor’s Schedule C filed on October 20, 2017 [doc. 11]. C.C.P. § 704.950 concerns the attachment of judgment liens to a declared homestead. The code section does not authorize a bankruptcy debtor to claim an exemption in personal property in any amount.

The chapter 13 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Karen Basmagy

Represented By  
Aris Artounians

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 13, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12848 CARLOS M PERAZA and BLANCA H PERAZA**

**Chapter 13**

**#60.00** Trustee's objection to homestead exemption

Docket 22

**Tentative Ruling:**

The Court will overrule the chapter 13 trustee's objection as moot.

In response to the chapter 13 trustee's objection, the debtors filed an amended Schedule C [doc. 29] to claim an exemption in the amount of \$24,975 under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5) in the real property located at 6943 Jamieson Ave., Reseda, CA, 91335, and an exemption in the amount of \$3,250 under C.C.P. § 703.140(b)(5) in a checking account. The total amount debtors now claim exempt under C.C.P. § 703.140(b)(5) is \$28,225, which is the maximum amount allowed under the statute.

The chapter 13 trustee must submit the order within seven (7) days.

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

**Debtor(s):**

CARLOS M PERAZA

Represented By  
Laleh Ensafi

**Joint Debtor(s):**

BLANCA H PERAZA

Represented By  
Laleh Ensafi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

9:30 AM

**1:12-19687 Ric Saenz and Maria Milagros Saenz**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

fr. 11/22/17; 12/6/17; 1/10/18; 1/24/18

Docket 71

**Tentative Ruling:**

**Ruling from 11/22/17**

Grant motion on the terms requested unless debtors are current on postpetition payments.

**Party Information**

**Debtor(s):**

Ric Saenz

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Maria Milagros Saenz

Represented By  
Kevin T Simon

**Movant(s):**

NATIONSTAR MORTGAGE, LLC

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:13-12022 Aleksandr Makaryants

Chapter 13

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK NA  
VS  
DEBTOR

fr. 11/15/17; 1/10/18

**Stipulation resolving motion filed 1/17/18**

Docket 87

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 1/17/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Aleksandr Makaryants

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 1/17/18

**STIP filed 2/7/18**

Docket 13

\*\*\* VACATED \*\*\* REASON: APO entered on 2/8/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Benjawan Rachapaetayakom

Represented By  
Joshua L Sternberg

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Jennifer C Wong

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13039 Benjawan Rachapaetayakom**

**Chapter 13**

**#4.00** Motion for relief from stay [PP]

ALLY FINANCIAL INC  
VS  
DEBTOR

Docket 19

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Benjawan Rachapaetayakom

Represented By  
Joshua L Sternberg

**Movant(s):**

Ally Financial Inc.

Represented By  
Adam N Barasch

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13142 Amir Elosseini**

**Chapter 11**

**#5.00** Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 1/17/2018

Docket 11

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amir Elosseini

Represented By  
Kevin Tang

**Movant(s):**

HSBC Bank USA, National

Represented By  
Darlene C Vigil

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:17-12367 Baudilia Henriquez

Chapter 7

#6.00 Motion for relief from stay [RP]

WILMINGTON TRUST, N.A.  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Baudilia Henriquez

Represented By  
Juanita V Miller

**Movant(s):**

Wilmington Trust, National

Represented By  
Dane W Exnowski



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Baudilia Henriquez**

**Chapter 7**

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12163 Cynthia Ann Donahue**

**Chapter 13**

**#7.00** Motion for relief from stay [AN]

JOHN PEPPER  
VS  
DEBTOR

Docket 31

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant may proceed under applicable nonbankruptcy law to take actions necessary to pursue final judgment regarding division of movant and debtor's retirement assets in state court. To the extent that the state court determines that these assets are community property, those assets are property of the bankruptcy estate, absent actions by the debtor to exempt them.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Cynthia Ann Donahue

Represented By  
Russ W Ercolani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Cynthia Ann Donahue**

**Chapter 13**

**Movant(s):**

John Pepper

Represented By  
Mark T Jessee

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:15-12226 Vassili Moskalenko

Chapter 13

#8.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 53

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Vassili Moskalenko

Represented By  
Elena Steers

**Movant(s):**

Toyota Motor Credit Corporation,

Represented By  
Austin P Nagel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Vassili Moskalenko**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:13-16424 Mark Pinsker and Melanie Pinsker

Chapter 13

#9.00 Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 79

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mark Pinsker

Represented By  
David S Hagen

**Joint Debtor(s):**

Melanie Pinsker

Represented By  
David S Hagen

**Movant(s):**

HSBC Bank USA, National

Represented By  
Jennifer C Wong

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10931 James Tomas and Imelda Tomas**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

James Tomas

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Imelda Tomas

Represented By  
R Grace Rodriguez

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, February 14, 2018

Hearing Room 301

9:30 AM

1:17-12661 William Hughes Gaines

Chapter 13

#11.00 Motion for relief from stay [RP]

DEUTSCHE BANK TRUST COMPANY AMERICAS  
VS  
DEBTOR

Docket 23

\*\*\* VACATED \*\*\* REASON: Case dismissed on 1/23/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

William Hughes Gaines

Represented By  
Onyinye N Anyama

**Movant(s):**

DEUTSCHE BANK TRUST

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:12-16951 Walter James Burns**

**Chapter 13**

Adv#: 1:17-01109 Burns v. Education Credit Management Corporation et al

**#12.00** Status conference re complaint to determine  
dischargeability of student loans

Docket 3

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 4/30/18.

Deadline to file pretrial motions: 5/15/18.

Deadline to complete and submit pretrial stipulation in accordance with Local  
Bankruptcy Rule 7016-1: 5/30/18.

Pretrial: 1:30 p.m. on 6/13/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after  
this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions  
against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Defendant(s):**

Education Credit Management

Pro Se

PHEAA

Pro Se

United States Department of

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Walter James Burns**

**Chapter 13**

**Plaintiff(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:13-11215 Cindy M Montano**

**Chapter 7**

Adv#: 1:17-01111 Melendrez v. Montano

**#13.00** Status conference re complaint for determination  
of the dischargeability of a claim

Docket 1

**Tentative Ruling:**

The defendant indicates in the parties' joint status report that he does not consent to entry of a final judgment by this Court. In a nondischargeability action under 11 U.S.C. § 523, the Court may enter final judgment without the parties' consent. 28 U.S.C. § 157(b)(1) ("Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11... and may enter appropriate orders and judgments....").

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 6/15/18.

Deadline to complete one day of mediation: 7/2/18.

Deadline to file pretrial motions: 7/31/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/8/18.

Pretrial: 1:30 p.m. on 8/22/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Cindy M Montano**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Cindy M Montano	Pro Se
-----------------	--------

**Defendant(s):**

Cindy M Montano	Pro Se
-----------------	--------

**Plaintiff(s):**

Antonio Melendrez	Represented By Michael J Armenta
-------------------	-------------------------------------

**Trustee(s):**

Amy L Goldman (TR)	Pro Se
--------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#14.00** Pre-trial conference re first amended complaint for declaratory and monetary damages for: (1) violation of the automatic/permanent stay of 11 U.S.c. §§362, 524 and 727 and; (2) Discriminatory treatment under 11 U.S.C. §525(a)

fr. 7/20/16; 10/5/16; 11/16/16; 1/25/16(stip); 2/8/17; 4/5/17; 4/19/17; 10/19/17 (stip)

Docket 95

**Tentative Ruling:**

In light of the Court's ruling on the plaintiff's motion to extend deadlines, this pretrial conference is continued to **1:30 p.m. on February 6, 2019**.

Appearances are excused on February 14, 2018.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Kevin W Coleman

Luis J Rodriguez

Represented By  
Kevin W Coleman

Joseph Dunn

Represented By  
Kevin W Coleman

Joann Remke

Represented By  
Kevin W Coleman

Kenneth E. Bacon

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

Kevin W Coleman

**Chapter 7**

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Represented By  
Katherine Bunker

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#15.00** Pretrial conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17

Docket 12

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule ("LBR") 7016-1(b)(2)(D), the defendant has not adequately identified his exhibits. Moreover, the parties have not included the information required by LBR 7016-1(b)(2)(F), (G), (H) and (I).

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

1:30 PM

**1:16-13009 Ronald Asher Halper**

**Chapter 7**

Adv#: 1:17-01041 Seror v. Halper et al

- #16.00** Pretrial conference re complaint for:  
(1) Avoidance and recovery of fraudulent transfer;  
(2) Declaratory relief;  
(3) Turnover of possession of real property; and  
(4) Disallowance of homestead exemption

fr. 7/12/17; 11/15/17(stip)  
**STIP to dismiss filed 1/5/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 1/8/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ronald Asher Halper

Represented By  
Rob R Nichols

**Defendant(s):**

Ronald Asher Halper

Pro Se

June Halper

Pro Se

**Joint Debtor(s):**

June Halper

Represented By  
Rob R Nichols

**Plaintiff(s):**

David Seror

Represented By  
Robert A Hessling

**Trustee(s):**

David Seror (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**

**Ronald Asher Halper**

Robert A Hessling

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#17.00** Application to employ Brutzkus Gubner and Resch Polster & Berger LLP  
as joint special litigation counsel effective as of November 22, 2017

fr. 1/18/18

Docket 111

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

Adv#: 1:17-01100 Betancur v. Kandy Kiss of California, Inc. et al

**#18.00** Motion for remand pursuant to 28 U.S.C. sec 1452(B),  
28 U.S.C. sec 1334(C)(1)and (2)

from: 1/17/18(stip)

Docket 8

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On January 29, 2016, Mauricio Betancur ("Plaintiff") filed a complaint against Kandy Kiss, Inc. ("Debtor"), alleging breach of written contract (the "State Court Action"). Notice of Removal, Exhibit 5. On September 20, 2016, Plaintiff filed the second amended complaint (the "Complaint"), which is the operative complaint. Notice of Removal, Exhibit 14. In relevant part, the Complaint alleges:

Plaintiff is a former employee of Debtor. Plaintiff worked for Debtor for several years and eventually entered into a written employment agreement with Debtor. Through his corporate entities, Plaintiff worked, among other positions, as Senior Vice President, Sales and Acquisitions. Kucuhed, Inc. ("Kucuhed") the entity through which Plaintiff worked for Debtor, has assigned Plaintiff any rights it is owed under the agreement.

Plaintiff's compensation was multi-faceted and included a payroll salary, a consulting payment to Kucuhed, bonuses, auto and travel expenses, insurance and bonuses pursuant to a commission schedule. Plaintiff and Debtor eventually got into a dispute regarding Plaintiff's compensation. On January 1, 2014, the parties memorialized their understanding in a written settlement agreement.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Kandy Kiss of California, Inc.**

**Chapter 7**

Plaintiff performed all covenants and conditions of the settlement agreement. As of October 5, 2015, the parties to this dispute released one another. Debtor promised to pay Plaintiff end of the month consulting fees through December 31, 2015. Debtor also promised to pay Plaintiff for 1.5% of the gross of shipments from Target Corporation ("Target") in 2016. Debtor breached the settlement agreement by: (A) failing to pay Plaintiff all commissions; and (B) failing to pay Plaintiff all salary amounts.

Plaintiff seeks damages from the date of the settlement agreement, because any other claims among the parties were resolved by the written contract at issue in this lawsuit. The settlement agreement affirms that Debtor agreed to forebear from bringing any future claims, actions or proceedings against Plaintiff related to or arising out of the prior employment agreement. Plaintiff has been damaged by Debtor's breach of the settlement agreement, and seeks the balance owing on the fully-executed settlement agreement of approximately \$1 million.

*Id.* Plaintiff demanded a jury trial. *Id.*

On February 14, 2017, petitioning creditors Apex Logistics International LAX Inc., High Hope Trading Ltd., IDFIX, Inc., Kucuehead, Shol Inc., Texking Trading Ltd. and Tu Pacific, LLC filed an involuntary chapter 7 petition against the Alleged Debtor. On March 14, 2017, RM Global Textile, Inc. joined as a petitioning creditor (collectively with other petitioning creditors, "Petitioning Creditors") [doc. 20].

On February 22, 2017, as a result of the involuntary petition, Plaintiff filed a notice of a stay of the State Court Action. Notice of Removal, Exhibit 16. On February 23, 2017, the state court entered minutes staying the State Court Action and vacating all future dates. Notice of Removal, Exhibit 22.

On July 31, 2017, Debtor filed a cross-complaint against Plaintiff and 18 other cross-defendants (the "Cross-Complaint"). Notice of Removal, Exhibit 31. The Cross-Complaint asserted 15 causes of action under California law: (1) Breach of Employment Agreement; (2) Intentional Interference with Existing Contract; (3) Fraudulent Inducement; (4) Rescission Based on Economic Duress; (5) Breach of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

Contract; (6) Conversion and Embezzlement; (7) Breach of Fiduciary Duty; (8) Aiding and Abetting Breach of Fiduciary Duty; (9) Fraud; (10) Conspiracy to Defraud; (11) Intentional Interference with Existing Contract; (12) Interference with Prospective Economic Advantage; (13) Unfair Business Practices; (14) Fraud; and (15) Negligent Misrepresentation. *Id.* In relevant part, the Cross-Complaint alleges:

The cross-defendants conspired to destroy and interfere with Debtor's business by stealing Debtor's confidential information and diverting the business relationship between Debtor and its largest customer, Target, to Plaintiff and Plaintiff's new employer, Secret Charm, LLC ("Secret Charm"). Secret Charm and Adir Haroni have a long history of establishing new businesses to raid competitors through use of wrongful and unfair business practices. With the assistance of Target employees named as cross-defendants in this Cross-Complaint, Secret Charm and Mr. Haroni caused Target to transfer Target's business with Kandy Kiss to Secret Charm, where they now work. The Target employees received substantial bribes from Plaintiff and others.

Debtor also believes Kucuhead and Contractor's Management Corporation, Inc. ("Contractor's Management") are alter egos of Plaintiff, and that Plaintiff used these companies as his personal pocketbooks. Debtor believes Plaintiff used Kucuhead and Contractor's Management to evade his own duties and obligations owed to, among others, Debtor. Plaintiff was the sole shareholder of Kucuhead and Contractor's Management.

During his time with Debtor, Plaintiff was an executive and the "face" of Debtor with Target. Plaintiff took advantage of his position and began making unreasonable and extortionate demands upon Debtor for payment, expressly threatening to ruin the relationship between Debtor and Target if Debtor did not acquiesce to his demands. In January 2014, Debtor entered into an employment agreement with Plaintiff, effective through December 31, 2015 (the "Employment Agreement"). Through the Employment Agreement, Debtor was required to pay Plaintiff a salary, certain expenses and allowances and other bonuses. For his part, Plaintiff was required to "oversee, manage, and grow the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Kandy Kiss of California, Inc.**

**Chapter 7**

business of [Debtor] in the design, marketing and production of clothing within the clothing industry...." Plaintiff also agreed to "perform faithfully, industriously, and to the best of [Plaintiff's] ability, experience and talents, all of the duties that may be required by the express and implicit terms of the [Employment Agreement]."

In the summer of 2015, Plaintiff began threatening to leave Debtor unless Debtor executed a new employment agreement with substantially higher compensation. While discussing these issues, Debtor learned that Plaintiff had sought and obtained from Debtor reimbursement for non-work related expenses, and that Debtor had overpaid Plaintiff hundreds of thousands of dollars in commissions, expense reimbursements and other payments to which he was not entitled. In response to Debtor's demands for repayment of these sums, Plaintiff threatened to quit Debtor, to inform Target that he was terminating his relationship with Debtor and to interfere with the business relationship between Debtor and Target. In August or September 2015, Plaintiff stopped coming to work regularly and stopped performing his duties for Debtor. Shortly thereafter, Plaintiff notified Debtor that he was going to breach the terms of the Employment Agreement and would leave Debtor.

Debtor and Plaintiff began discussions about termination of their relationship and how to effect a seamless transition from Plaintiff to his replacement. To lull Debtor into believing he would not disclose to Target any information about his dispute with Debtor, Plaintiff represented to Debtor that he intended to leave the apparel business entirely and follow a career in entertainment. On October 1, 2015, Plaintiff sent an email to Debtor stating that he had not informed Target of the dispute between Debtor and Plaintiff, and that Plaintiff had not told anyone at Target that he intended to leave Debtor so that the business relationship with Target would remain intact. Debtor now knows these representations were false.

Plaintiff also told Debtor that, unless Debtor settled its dispute with Plaintiff, Plaintiff would inform Target about his dispute with Debtor.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Kandy Kiss of California, Inc.**

**Chapter 7**

Moments before Plaintiff was to meet with Target to introduce his replacement, Plaintiff presented a settlement agreement to Debtor's representative, and told the representative that unless the parties entered into a settlement agreement, Plaintiff would not meet with Target. Debtor's representative signed the settlement agreement under duress. At this time, Plaintiff had already informed Target that he would be leaving and created doubt about Debtor's ability to continue its business with Target. After leaving Debtor, Debtor began working for Secret Charm, a direct competitor of Debtor.

Between September 22, 2015 and October 22, 2015 (the date of Plaintiff's departure), several employees of Debtor resigned in concert with Plaintiff. A total of 12 of Debtor's employees began working for Secret Charm after their departure. Moreover, Target has confirmed that it knew about the departure of Debtor's employees even before Debtor.

During Debtor's meeting with Target, Target informed Debtor that it was placing its business with Debtor on a temporary "pause" to assess whether Debtor could continue servicing Target without its employees. However, Target did not have a temporary "pause" procedure, and Target falsely represented that it was pausing its business with Debtor while it was building up its business with Plaintiff and Secret Charm. During the "pause" period, Debtor excelled in its business with Target and received glowing reviews from Target. Despite the glowing reviews, Target terminated its relationship with Debtor. Afterwards, Debtor learned that Plaintiff was bribing Target employees by, among other things, taking the employees out to lavish dinners, in violation of Target's own code of conduct.

Plaintiff also represented to Debtor that he had been able to secure an agreement with Bella Thorne, an actress, to be the celebrity face of Dazzle Deal, an agreement between Plaintiff (through one of his entities) and Debtor to merchandise and sell to Target apparel, accessories and gaming. In reliance on Plaintiff's representations, Debtor agreed to enter into an agreement regarding the Dazzle Deal



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Kandy Kiss of California, Inc.**

**Chapter 7**

and manufactured the products required by the agreement. Debtor shipped the units to Target and paid Plaintiff and/or Contractor's Management \$0.50 per unit that Debtor shipped to Target pursuant to the Dazzle Deal.

Under these facts, Plaintiff breached the Employment Agreement and fraudulently induced Debtor to settle with Plaintiff. Plaintiff also embezzled and fraudulently misappropriated funds belonging to Debtor. Moreover, as a result of Debtor entering into the settlement agreement under duress, Debtor is entitled to rescind the settlement agreement. Plaintiff also breached the settlement agreement. The cross-defendants conspired to interfere with Debtor's business with Target. The employees who left Debtor to work for Secret Charm breached fiduciary duties owed to Debtor. The Target employees aided and abetted this breach. Plaintiff also breached the parties' Dazzle Deal agreement.

*Id.* Debtor is seeking damages in excess of \$70 million. Notice of Removal, Exhibit 38. Subsequently, Debtor filed an answer to the Complaint, Notice of Removal, Exhibit 35, and the cross-defendants filed answers to the Cross-Complaint. Notice of Removal, Exhibits 36, 39-43, 46-47, 51. The answers include equitable affirmative defenses under California law. *Id.* Target and Janis Volk filed a demurrer to the Cross-Complaint. Notice of Removal, Exhibit 55. The parties have also filed several motions in state court, including discovery motions. Notice of Removal, Exhibits 17, 24, 53, 57, 68.

On September 19, 2017, pursuant to a stipulation between Petitioning Creditors and Debtor, the Court entered an Order for Relief against Debtor [Bankruptcy Docket, doc. 62]. Subsequently, Howard M. Ehrenberg was appointed the chapter 7 trustee (the "Trustee"). On the same day, Plaintiff filed a motion for relief from the automatic stay (the "RFS Motion") [Bankruptcy Docket, doc. 64], requesting relief from the automatic stay to prosecute and defend the state court action and remove the state court action to this Court. On November 22, 2017, the Court entered an order granting the RFS Motion [Bankruptcy Docket, doc. 101].

On December 1, 2017, Plaintiff removed the state court action to this Court. On the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

same day, the Court entered an Order to Show Cause re: Remand [doc. 2]. On December 28, 2017, the Trustee filed a motion requesting remand of the State Court Action (the "Motion") [doc. 8]. On January 10, 2018, Plaintiff and cross-defendants Kucuhhead and Haven Entertainment Group, LLC filed an opposition to the Motion ("Plaintiff's Opposition") [doc. 15]. On the same day, cross-defendants Secret Charm, Mr. Haroni, Cathy King, Lauri Hamer and Melissa Krupa filed a joinder to Plaintiff's Opposition [doc. 17]. Cross-defendant Target also filed an opposition to the Motion [doc. 18]. On January 17, 2018, the Trustee filed an omnibus reply to the oppositions (the "Reply") [doc. 19].

On January 31, 2018, the parties filed a joint status report (the "Status Report") [doc. 20]. In the Status Report, all parties consent to this Court's entry of a final judgment in this action, with the Trustee noting that his consent is "only given to the extent this Court retains jurisdiction over the removed action...." Status Report, p. 5. The Trustee did not state that he consents to this Court conducting a jury trial.

## **II. ANALYSIS**

### ***A. Subject Matter Jurisdiction***

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441 – 1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452. The party seeking removal bears the burden of establishing federal jurisdiction. *Id.*

As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

i. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

ii. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . ." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11 . . ." 28 U.S.C. § 157(b)(1); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

iii. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

[T]he outcome of the 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 (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pegasus Gold Corp.*, 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at \*10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have "arising under" or "arising in" jurisdiction. There is no "arising under" jurisdiction because the matter does not involve any statutory provisions of the Bankruptcy Code. This matter also does not "arise in" the bankruptcy case because it can independently exist outside of bankruptcy and be brought in another forum.

However, this Court does have "related to" jurisdiction over this matter. The Trustee, in his capacity as representative of the bankruptcy estate, is both a defendant to this action as well as the cross-complainant. If the Trustee is successful in this action, the Trustee may obtain a substantial judgment in favor of the estate, thereby increasing the amount of cash available for distribution. On the other hand, if Plaintiff obtains a breach of contract judgment, the size of the estate may be diminished on account of that liability. Consequently, both the Complaint and the Cross-Complaint have the potential to impact administration of this estate.

In the Reply, the Trustee asserts that this Court does not have "related to" jurisdiction

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

1:30 PM

CONT... **Kandy Kiss of California, Inc.**

Chapter 7

because "[b]reach of contract claims that arose before and independent of the administration of [the] bankruptcy estate are not 'related to' the bankruptcy." The Trustee cites *In re Castlerock Properties*, 781 F.2d 159, 161 (9th Cir. 1986), for this proposition. However, in *Castlerock Properties*, the Ninth Circuit Court of Appeals did not decide whether the bankruptcy court had "related to" jurisdiction; rather, the question before the Court of Appeals was whether the bankruptcy court could enter final judgment. *Castlerock Properties*, 781 F.2d at 161. Thus, *Castlerock Properties* is inapposite. Whether this Court may enter final judgment is a different issue from whether this Court has subject matter jurisdiction. Based on the facts above, this Court has "related to" subject matter jurisdiction over this action.

***B. Mandatory Abstention***

Citing to bankruptcy court decisions between 1989 and 1994, the Trustee asserts that mandatory abstention is applicable to removed actions. However, in 2001, the Ninth Circuit Court of Appeals held that neither mandatory nor permissive abstention applies to removed proceedings because there is no pending state proceeding upon removal. *In re Lazar*, 237 F.3d 967, 981-82 (9th Cir. 2001) (citing *Sec. Farms v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 124 F.3d 999, 1009-10 (9th Cir. 1997)). This Court is bound by the Court of Appeals' holding. As a result, neither mandatory nor permissive abstention applies to this proceeding.

***C. Remand***

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

*Id.*, 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007).

As a preliminary matter, Plaintiff's argument regarding unclean hands reaches the merits of this action. Plaintiff asserts that Debtor acted unfairly and inequitably in refusing to honor the parties' settlement agreement and that Debtor's economic duress claim against the cross-defendants is "galling." Plaintiff's Opposition, p. 15. Plaintiff contends that Debtor and its counsel acted in bad faith in connection with the negotiation of the settlement agreement and that, as a result, their unclean hands are imputed onto the Trustee. These arguments do not establish unclean hands as relates to the Trustee's request for a remand of the action. Rather, Plaintiff is effectively asking the Court to decide an affirmative defense to the Cross-Complaint. Whether the affirmative defense has merit or not has no bearing on this Court's decision to remand this action.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

In weighing the factors above, the Court finds that remand is appropriate. First, although the outcome of this proceeding may impact the size of this estate, litigation of the State Court Action will not otherwise have an effect on the bankruptcy case. The liability arising from the State Court Action will determine the amount of distribution available to creditors, but that determination will not hinder the Trustee and other parties in interest from proceeding with Debtor's bankruptcy case. Plaintiff asserts that remanding the State Court Action will cause delay because the state court will not be able to try the State Court Action faster than this Court. However, even if this is true, a brief delay will not necessarily impact administration of this estate. At this time, the parties are still investigating Debtor's assets and liabilities.

Moreover, both the Complaint and the Cross-Complaint allege exclusively California causes of action, including allegations of breach of contract, breach of fiduciary duty, intentional interference with an existing contract and unfair business practices. The answers filed by the parties also assert affirmative defenses under California law, including equitable defenses such as laches and unclean hands. Although the issues may not be particularly difficult or complex, unlike the state court, this Court does not routinely adjudicate these issues.

Next, the only basis for bankruptcy jurisdiction over this proceeding is 28 U.S.C. § 1334, and neither the Complaint nor the Cross-Complaint present "core" issues. As a result, this Court is unable to enter final judgment without the parties' consent. Although the Trustee noted in the Status Report that he will consent to this Court's entry of a final judgment, that consent is contingent on the Court denying the Motion. Both parties have also requested a jury trial. While the Trustee stated that he would consent to this Court's entry of a final judgment if the Court denies the Motion, the Trustee has not signaled any consent to this Court presiding over a jury trial. As a result, for a jury trial to take place, it may be necessary for the United States District Court to withdraw the reference, and then the parties will have to wait for a jury trial to take place there.

Further, as noted above, the State Court Action has a limited relationship to the main bankruptcy case. While the extent of damages may have an effect on future distribution to creditors, the State Court Action does not otherwise deal with any bankruptcy issues or impede the Trustee's administration of the estate. As there are

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

no core bankruptcy matters at issue in this proceeding, severability of any bankruptcy issues from state law causes of action is also not an option.

The Court is not concerned about the burden on its docket of retaining this proceeding (possibly for pre-trial matters only). That factor is neutral.

The State Court Action includes 19 nondebtor parties, all of whom are either based in California or have significant business contact with California. The agreements and transactions at issue also took place in California, and the parties have agreed to California as their choice of forum. As a result, comity also dictates that the parties litigate in a California state court.

Finally, the parties will not face any prejudice if the Court remands the State Court Action to state court. At the time Plaintiff filed the Complaint, he chose the state court as the appropriate forum. The Trustee, as representative of Debtor's estate, also chose the state court as the appropriate forum to file the Cross-Complaint. Remanding this proceeding will allow the state court to continue adjudicating the issues.

Although the record does not demonstrate that Plaintiff removed this action for the purpose of forum shopping (as opposed to, for example, complying with the deadlines provided in Federal Rule of Bankruptcy Procedure 9027(a)(2)), and there does not appear to be a related proceeding in state court, most of the other factors weigh in favor of remanding this proceeding to state court. Consequently, the Court will grant the Motion.

**III. CONCLUSION**

The Court will grant the Motion and remand this proceeding to state court.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

---

1:30 PM

CONT... Kandy Kiss of California, Inc.

Chapter 7

Jessica L Bagdanov

**Defendant(s):**

Kandy Kiss of California, Inc.

Pro Se

**Plaintiff(s):**

Mauricio Betancur

Represented By  
Cynthia M Cohen

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

Adv#: 1:17-01100 Betancur v. Kandy Kiss of California, Inc. et al

**#19.00** Status conference re: notice of removal

from: 1/17/18(stip)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Defendant(s):**

Kandy Kiss of California, Inc.

Pro Se

**Plaintiff(s):**

Mauricio Betancur

Represented By  
Cynthia M Cohen

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#20.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #21.00** Status conference re complaint
- 1) avoidance of fraudulent transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) avoidance of fraudulent transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) avoidance of fraudulent transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) avoidance of fraudulent transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)];
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17; 11/15/17; 12/13/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

Helayne Muennichow

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11026 Donnabelle Escarez Mortel**

**Chapter 7**

Adv#: 1:17-01065 UL LLC v. Mortel

**#22.00** Pretrial conference re complaint  
objecting to dischargeability of a debt

fr. 9/13/17

**stip to continue filed 1/16/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 1/22/18 cont matter to 6/6/18  
@ 1:30pm.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donnabelle Escarez Mortel

Represented By  
Jeffrey J Hagen

**Defendant(s):**

Donnabelle Escarez Mortel

Pro Se

**Plaintiff(s):**

UL LLC

Represented By  
Howard Steinberg

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01102 Zarrabi et al v. Akhlaghpour

**#23.00** Status conference re complaint for nondischargeability of debt

Docket 1

**Tentative Ruling:**

On February 1, 2018, the defendant filed an answer and demanded a jury trial [doc. 6]. The defendant does not have a right to a jury trial in a nondischargeability action under 11 U.S.C. § 523. *In re Hashemi*, 104 F.3d 1122, 1124-25 (9th Cir. 1996); *In re Sasson*, 424 F.3d 864, 869-70 (B.A.P. 9th Cir. 2005); and *In re Valle*, 469 B.R. 35 (Bankr. D. Idaho 2012).

In addition, although the plaintiff filed a unilateral status report, the plaintiff did not include "a declaration setting forth the attempts made by the party to contact or obtain the cooperation of the non-complying party." Local Bankruptcy Rule 7016-1(a)(3).

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

Kamboozia Zarrabi

Represented By  
Stella A Havkin

Farideh Akhlaghpour

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

- #24.00** Status conference re complaint of plaintiff judgment creditor Mohammad Hassibi, seeking judgment of bankruptcy court holding debt evidenced by Texas State judgment in favor of Hassibi, and against debtor Shahram Homayoun, shall be "nondischargeable" pursuant to 11 USC §523(a)(2) as to Shahram Homayoun

Docket 1

**Tentative Ruling:**

The parties indicate in their joint status report that they do not consent to entry of a final judgment by this Court. In a nondischargeability action under 11 U.S.C. § 523, the Court may enter final judgment without the parties' consent. 28 U.S.C. § 157(b)(1) ("Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11... and may enter appropriate orders and judgments....").

The Court will set a deadline of **March 30, 2018** for the plaintiff to file a motion for summary judgment.

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

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Maryam Azizi**

**Chapter 7**

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

**#25.00** Plaintiff's motion for summary judgment or,  
in the alternative, partial summary judgment

Docket 33

**Tentative Ruling:**

The Court will continue this matter to **February 21, 2018 at 2:30 p.m.**

Appearances on February 14, 2018 are excused.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #26.00** Status conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

Docket 30

**Tentative Ruling:**

The Court will continue this status conference to **February 21, 2018 at 2:30 p.m.**

Appearances on February 14, 2018 are excused.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT...**

**Mahshid Loghmani**

Richard A Marshack

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:16-01080 Olde Wolbers et al v. Cazares

**#27.00** Trial re: complaint objecting to discharge  
[FOR RULING]

fr. 7/20/16; 9/14/16; 10/5/16; 10/19/16; 11/23/16; 12/21/16;  
6/14/2017; 6/21/17; 11/28/17; 11/29/17; 1/17/18; 1/31/18

Docket 1

**Tentative Ruling:**

The Court will enter judgment in favor of Dean Albert Maury Cazares ("Defendant").

**I. BACKGROUND**

Defendant, Burton Bell, and Raymond Herrera were founding members of the band known as "Fear Factory." From 1994 through 2003, the band Fear Factory consisted of Defendant, Mr. Bell, Mr. Herrera, and Christian Olde Wolbers. Defendant, Mr. Bell, Mr. Herrera, and Mr. Wolbers were each 25% owners of Fear Factory, Inc. ("Fear Factory"), an entity that owned the rights in and to the trade name and trademark of Fear Factory. (Doc. 39, Joint Pre-Trial Stipulation (the "Pre-Trial Stipulation"), ¶ 1.) [FN1] [FN2]

Oxidizer, Inc. ("Oxidizer") is a Delaware corporation, incorporated on February 19, 2009. (Exh. 18.) The Certificate of Incorporation lists Defendant and Mr. Bell as directors of Oxidizer. (*Id.*) Defendant is a 50% owner of Oxidizer. (Exh. 3, at p. 4; Exh. 11, at p. 43.) Oxidizer is the entity that oversees the music recording, licensing, and publishing agreements for the band Fear Factory. (Exh. 9, at p. 10.) Defendant receives income from Oxidizer. (*Id.*, at p. 34.)

Fear Campaign, Inc. ("Fear Campaign") is a Delaware corporation, incorporated on May 19, 2009. (Exh. 17.) The Certificate of Incorporation lists Defendant and Mr. Bell as directors of Fear Campaign. (*Id.*) Defendant is a 50% owner of Fear Campaign. (Exh. 3, at p. 4; Exh. 11, at p. 43.) Fear Campaign is the entity that operates Fear Factory's tours, live performances, and merchandise sales. (Exh. 9, at

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

2:30 PM

CONT... **Dean Albert Maury Cazares**

Chapter 7

pp. 12, 30, 35.) Defendant receives income from Fear Campaign. (*Id.*, at p. 34.)

Defendant stated that he did not know that he was an officer or director of Fear Campaign and Oxidizer. (Exh. 11, at pp. 43–44.) Defendant stated that he attended board meetings of and signed documents on behalf of both Fear Campaign and Oxidizer, but he not remember exactly when. (Exh. 12, at p. 16.) Defendant also was unaware of the financial condition of either Fear Campaign or Oxidizer. (*Id.*, at p. 45–46.) Defendant stated that he is a signatory on the bank accounts for Fear Campaign and Oxidizer, although he had never written a check on either corporation's accounts. (*Id.*, at p. 46.)

Scott Koenig is Defendant's manager and a manager of Fear Factory. (Exh. 10, at p. 2.) On at least one occasion, Mr. Koenig signed documents on behalf of Fear Campaign. (Exh. 11, at p. 32.) Defendant stated his belief that Mr. Koenig has the authority to write checks from the Oxidizer and Fear Campaign accounts. (*Id.*, at p. 47.) Defendant also stated that Mr. Koenig had copies of contracts and agreements relating to Defendant and Fear Factory. (*Id.*, at pp. 16, 51.)

*A. Settlement Agreement and Stipulated Judgment*

On March 24, 2009, Mr. Bell, Defendant, and Oxidizer sued Mr. Herrera, Mr. Wolbers, and other defendants for declaratory relief claiming they were entitled to use "Fear Factory" and the rights that go along with that name. On March 15, 2011, the parties entered into an agreement signed on March 15, 2011 (the "Settlement Agreement"). (Pre-Trial Stipulation, ¶ 2.) Pursuant to the terms of the Settlement Agreement, Defendant, among others, agreed to pay the following monies to Mr. Herrera and Mr. Wolbers (together, "Plaintiffs"):

- 20% of net recording advances and net record royalties arising from the "Mechanize" album;
- 20% of net recording advances and net record royalties arising from the two Fear Factory albums following the "Mechanize" album;
- 15% of net recording advances and net record royalties arising from the third and fourth Fear Factory albums following the "Mechanize" album;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Dean Albert Maury Cazares**

**Chapter 7**

- A percentage of net recording advances and net record royalties arising from any live Fear Factory albums or re-recorded Fear Factory songs;
- 50% of all net income from the sale of Fear Factory merchandise;
- 8.5% of all net touring income for a period of seven years until December 8, 2016; and
- \$83,657.62 due as of the date of the Settlement Agreement, payable within 12 months (the "Prior Monies Due").

(Exh. 49, at pp. 2–9.) The Settlement Agreement also provides:

In the event of a breach of this Agreement or an action for Declaratory Relief regarding an interpretation of any provision in this Agreement, the prevailing party, in addition to all other legal or equitable remedies, shall be entitled to recover all reasonable costs and expenses, including reasonable attorney's fees, incurred by reason of such action.

(Exh. 49, at p. 17.) The Settlement Agreement further states that "[p]rovided that Bell and [Defendant] have timely paid the Prior Monies Due in full in accordance with this Agreement, in the event of any breach of this agreement hereunder, Herrera, Wolbers, and/or Priske's sole remedy shall be an action for damages at law[.]" (Exh. 49, at p. 18.) Within 12 months after executing the Settlement Agreement, Defendant paid in excess of \$90,000 to Plaintiffs. (Pre-Trial Stipulation, ¶ 4.)

On December 17, 2013, Plaintiffs sued Mr. Bell, Defendant, and Oxidizer in state court for breach of written contract, breach of fiduciary duty, accounting, conversion, and violation of California Business and Professions Code § 17200 *et seq.* (the "State Court Action"). (*Id.*, ¶ 5.) On October 16, 2015, Defendant, Mr. Bell, and Oxidizer entered into a Stipulation for Entry of Judgment, whereby the Settlement Agreement was to remain in full force and effect, and judgment in the amount of \$214,307.24 was to be entered, jointly and severally, against Defendant, Mr. Bell, and Oxidizer (the "Stipulated Judgment"). (*Id.*, ¶ 6.)

On December 16, 2015, the state court entered judgment in favor of Plaintiffs pursuant to the terms of the Stipulated Judgment, specifically holding that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Settlement Agreement remained in full force and effect (the "Judgment"). The state court also retained jurisdiction to award Plaintiffs their attorney's fees and costs. (*Id.*, ¶ 7.)

On February 17, 2016, Plaintiffs filed a motion for attorney's fees (the "Attorney's Fees Motion"). In the Attorney's Fees Motion, Plaintiffs sought to amend the Judgment to include \$681,060 in attorney's fees and costs Plaintiffs allegedly incurred in prosecuting the State Court Action. The hearing on the Attorney's Fees Motion was scheduled for March 28, 2016. (*Id.*, ¶ 8.)

***B. Defendant's Bankruptcy Filing***

On February 25, 2016—before the hearing on the Attorney's Fees Motion—Defendant filed a chapter 7 petition. At the petition date, Ian Landsberg and Casey Donoyan were Defendant's bankruptcy counsel. On March 10, 2016, Defendant filed a Statement of Financial Affairs ("SOFA") and schedules (together, "March 2016 Schedules") [Exh. 1]. On April 21, 2016, Defendant filed amended schedules A, B, C and I ("April 21, 2016 Schedules") [Exh. 3]. On April 25, 2016, Defendant filed an amended Schedule C and SOFA [Exh. 5]. On March 2, 2017, Defendant filed an amended SOFA ("March 2017 Schedules") [Exh. 7]. The foregoing schedules were filed by Mr. Landsberg on behalf of Defendant.

On April 7, 2017, Defendant filed a Substitution of Attorney, replacing Mr. Landsberg with Andrew Smyth as his bankruptcy counsel of record [case no. 1:16-bk-10543-VK, doc. 87]. On August 29, 2017, Defendant filed amended schedules A/B and C ("August 2017 Schedules") [Exh. 8]. The August 2017 Schedules were filed by Mr. Smyth on behalf of Defendant.

Several meetings of creditors were held in Defendant's case. (Exhs. 9–12.) [FN3] The meeting of creditors was continued several times, in part because Defendant was performing on tour in Europe with Fear Factory during August 2016, and in part because the parties sought to mediate their disputes. (Exh. 56.) The mediation date was set for October 5, 2016. (Case no. 1:16-bk-10543-VK, doc. 72 at p. 3.) The mediation was unsuccessful.

***C. Defendant's Income***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

In his March 2016 Schedules, Defendant indicated in Schedule I that his current monthly gross income as of the petition date was \$4,281.57. Defendant did not provide a breakdown of his income sources in his Schedule I. (Exh. 1, at pp. 20, 24–25.) In his Statement of Current Monthly Income, Defendant disclosed his sources of income as follows:

- Monthly income of \$78.01 from American Society of Composers, Authors and Publishers ("ASCAP")
- Monthly income of \$3,285.93 from Fear Campaign
- Monthly income of \$133.33 from Oxidizer
- Monthly income of \$215.34 from Sound Exchange
- Monthly income of \$568.96 from Universal Music Publishing Group ("Universal")

(*Id.*, at pp. 36–37.)

In his April 21, 2016 Schedules, Defendant included a breakdown of income sources in his Schedule I, disclosing the same income as before from ASCAP, Fear Campaign, Oxidizer, and Universal. Defendant amended his monthly income from Sound Exchange from \$215.34 to \$215.40. Defendant's amended aggregate monthly income was \$4,281.63. (Exh. 3, at p. 49.)

In his declaration [doc. 57], Mr. Wolbers alleged that Defendant received income from the following sources:

<b>Alleged Income Source</b>	<b>Evidence</b>
Bi-annual royalty payment from BMG Entertainment ("BMG")	Declaration of Christian Olde Wolbers in Anticipation of Trial Testimony ("Wolbers Decl."), ¶ 12 [FN4]
Bi-annual royalty payment from previously released albums	Wolbers Decl., ¶ 13
Bi-annual royalty payment from ASCAP	Wolbers Decl., ¶ 14
Monthly payments from Sound Exchange for digital streams	Wolbers Decl., ¶ 15

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Endorsement deal with Seymour Duncan pickups	Wolbers Decl., ¶ 16
Endorsement deal with Ibanez Guitars	Wolbers Decl., ¶ 17
Postpetition income from touring as Fear Factory from Spring 2016 through Fall 2016	Wolbers Decl., ¶ 20
Postpetition income from continued use of Fear Factory trademark in connection with live performances and the sale of music	Wolbers Decl., ¶ 21

Defendant testified that he disclosed his ASCAP and Sound Exchange income in his schedules. (Declaration of Dean Cazares for Direct Testimony at Trial ("Cazares Decl."), [doc. 54], ¶ 11.) Universal appears to be the successor-in-interest to BMG, and the entity who currently pays publishing royalties to Defendant. (*See, e.g.*, Exhs. 20–26, 44–48.) As noted above, Defendant disclosed royalty income from Universal in his March 2016 and April 21, 2016 Schedules.

Defendant also disclosed his endorsement agreements to the chapter 7 trustee, Diane C. Weil ("Trustee"), and stated that such endorsement agreements were canceled. (Cazares Decl., ¶ 7.) Defendant further stated that he has complied with all discovery requests by the Trustee. (*Id.*, ¶ 15.) Defendant had "turned over to the Trustee a huge amount of material completely disclosing [his] financial condition prior to and after bankruptcy," including three years of individual bank statements, three years of individual income tax returns, and profit and loss statements for Fear Campaign and Oxidizer. (Cazares Decl., ¶ 14.)

On June 19, 2017, the Trustee filed a motion for turnover by Defendant of \$9,122.21, comprised of the following postpetition royalty payments from Warner Music Group Services ("Warner"):

- On September 26, 2016, Defendant received \$4,133.51 (attributable to Fear Factory) and \$552.50 (attributable to Brujeria [a different band with which Defendant performed]); and
- On March 27, 2017, Defendant received \$3,789.33 (Fear Factory) and \$646.87 (Brujeria).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

(Declaration of Diane C. Weil ("Trustee Decl."), doc. 109, ¶ 12.) The Court granted the motion for turnover and entered an order directing Defendant to turn over \$9,122.21 to the Trustee ("Turnover Order") [Case no. 1:16-bk-10543-VK, docs. 89, 95.] On August 9, 2017, Defendant complied with the Turnover Order by delivering to the Trustee the payments he had received. (Cazares Decl., ¶¶ 8–9.) Defendant testified that the Trustee has been collecting his ASCAP and BMG/Universal royalties since June 2016.

***D. Defendant's Copyrights and Trademarks***

In his March 2016 Schedules, under item no. 26 of his Schedule A/B (Patents, copyrights, trademarks, trade secrets, and other intellectual property), Defendant stated, "All band members have trademarked the band[']s name: Fear Factory." The value of Defendant's interest was listed as "Unknown." (Exh. 1, at p. 9.)

In his April 21, 2016 Schedules, under item no. 26 of his Schedule A/B, Defendant disclosed a 50% interest in the "Fear Factory" trademark and his interest in copyrights to approximately 180 song compositions. These copyright interests were listed as having an "Unknown" value. (Exh. 3, at p. 5 and Attachment 26.1.)

In his August 2017 Schedules, under item no. 19 of his Schedule A/B (Non-publicly traded stock and interests in incorporated and unincorporated businesses), Defendant listed "Trade Mark and Fear Factory" with a value of \$7,175.00. (Exh. 8, at p. 4.) Under item no. 25 (trusts, equitable, or future interests in property), Defendant listed "Song Books and copy rights" with a value of \$13,000. (*Id.*, at p. 5.) Defendant did not list any property under item no. 26 (patents, copyrights, trademarks, etc.) and did not attach a list of his song compositions. (*Id.*) To his Schedule C, Defendant added a claim of exemption in the amount of \$10,179.42 in "Song Books and copy rights," valued at \$13,000. (*Id.*, at p. 8.)

In his declaration, Mr. Wolbers stated he received approximately \$3,000 bi-annually in royalties arising from his copyright interests in the songs he co-created with Defendant under the Fear Factory name. (Wolbers Decl., ¶ 14.)

Defendant testified that he never discussed the total value of his copyrighted songs

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

with his new counsel, Mr. Smyth. Mr. Smyth had told Defendant that an appraiser would need to assess their value. Defendant further stated that he did not have money to afford an appraiser, so he did not hire one. Defendant did not know whether \$13,000 was the total value of his copyrighted songs, and testified that "\$13,000" was a value that Mr. Smyth had put in his schedules.

*E. Defendant's Interests in Fear Campaign and Oxidizer*

In his March 2016 Schedules, under item no. 19 of his Schedule A/B (Non-publicly traded stock and interests in incorporated and unincorporated businesses), Defendant stated he had no interest in any non-publicly traded stock and interests in incorporated and unincorporated businesses, or any interest in an LLC, partnership, and joint venture. (Exh. 1, at p. 8.) Defendant indicated under item no. 27 of his SOFA that within four years before he filed for bankruptcy, he did not own or manage a business. (Exh. 1, at p. 29.)

In his April 21, 2016 Schedules, under item no. 19 of his Schedule A/B, Defendant disclosed a 50% ownership interest in each of the following entities: Fear Factory, Oxidizer, and Fear Campaign. Each ownership interest was listed as having an "Unknown" value. (Exh. 3, at p. 4.)

At the July 17, 2017 meeting of creditors, Defendant admitted that he had participated in Fear Campaign and Oxidizer board meetings and had signed documents as an officer or director of Fear Campaign and Oxidizer. (Exh. 12, at pp. 16–18.)

In his August 2017 Schedules, Defendant's amended Schedule A/B omitted from item no. 19 his 50% ownership interests in Fear Factory, Oxidizer, and Fear Campaign. (Exh. 8, at p. 4.)

*F. Defendant's Executory Contracts*

In his March 2016 Schedules, Defendant listed on his Schedule G an unexpired apartment lease. Defendant listed no other unexpired leases or executory contracts. (Exh. 1, at p. 17.) In their adversary complaint, Plaintiffs alleged that Defendant omitted a "wealth of executory contracts from which Defendant derives thousands of dollars each month." (Doc. 1, at ¶ 19(b).)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Included in the exhibits admitted into evidence are copies of the following agreements:

- Soulfood Music Distribution ("Soulfood") (music distribution agreement) (Exh. 19),
- Nuclear Blast USA ("Nuclear Blast") (music licensing agreement) (Exh. 37);
- Tanglade LTD ("Tanglade") (music licensing agreement) (Exh. 39);
- Riot Entertainment Australia ("Riot") (music licensing agreement) (Exh. 40);
- BMG/Universal (co-publishing agreements) (Exhs. 47, 48);
- Ibanez (guitar endorsement agreement) (Exh. 82); and
- Freibank Musiksverlag ("Freibank") (music publishing agreement) (Exh. 83).

Oxidizer is the counterparty to the agreements with Soulfood, Nuclear Blast, Tanglade, Riot, and Freibank. The copies of agreements with Soulfood, Nuclear Blast, and Tanglade admitted into evidence do not contain signatures. Defendant and Mr. Bell signed the Riot agreement on behalf of Oxidizer. Defendant's manager Mr. Koenig signed the Freibank agreement on behalf of Oxidizer.

Defendant personally signed the agreements with BMG/Universal and Ibanez. Defendant signed the BMG/Universal agreements in 2001 and 2003. At the May 27, 2016 meeting of creditors, Defendant acknowledged that he received royalty income from BMG/Universal. (Exh. 9, at p. 18.)

In his declaration, Mr. Wolbers testified that Defendant has had endorsement deals with Seymour Duncan and Ibanez since 1997. (Wolbers Decl., ¶¶ 16, 17.) At the March 17, 2017, Defendant testified that he had entered into prepetition endorsement deals with Hoshino Gakki Co., the maker of Ibanez guitars. Defendant stated that he signed a prepetition Ibanez endorsement deal in April 2014. Defendant's counsel stated that the April 2014 agreement had expired after a one-year term. (Exh. 11, at pp. 26–27.) Postpetition, on August 2, 2016, Defendant signed an Ibanez agreement. (Exh. 82.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

At the March 17, 2017 meeting of creditors, Defendant stated that he had a prepetition endorsement deal with Seymour Duncan, a manufacturer of guitar pickups. Defendant stated that this prepetition agreement with Seymour Duncan had expired. (Exh. 11, at pp. 29–30.) Defendant also disclosed that he signed a postpetition endorsement agreement with Seymour Duncan. (*Id.*, at p. 30.) However, no copy of the Seymour Duncan agreement was admitted into evidence.

At the March 17, 2017 meeting of creditors, Defendant stated that TKO was the booking agent for the venues at which he performed. Defendant did not have copies of the venue booking agreements and assumed that his manager Mr. Koenig, John Brand (Defendant's tour manager), or TKO would have such copies. Defendant stated that he never reviewed these venue booking agreements. (Exh. 11, at p. 51.)

At the March 17, 2017 meeting of creditors, Defendant also stated he was familiar with Manhead, LLC ("Manhead"), a merchandising company. Defendant further stated that he did not sign the Manhead agreement and was not familiar with that agreement. He had no knowledge of the \$100,000 allegedly paid by Manhead to Fear Campaign. (Exh. 11, at pp. 31–33.)

**G. Defendant's Guitars**

In his March 2016 Schedules under "Equipment for Sports and Hobbies," Defendant listed "5 guitars 2 Snowboards" with a total value of \$2,200. (Exh. 1, p. 7.) At the July 18, 2016 meeting of creditors, Defendant testified that one of the guitars was a Ibanez Cazares signature line guitar and that none of the guitars had been modified for Defendant's use. (Exh. 10, at p. 3.)

In their declarations, Plaintiffs testified that Defendant's customized Ibanez guitar is more expensive than the "Dean Cazares" guitar commercially available from Ibanez. (Wolbers Decl., ¶ 19; Herrera Decl., ¶ 19.) Defendant disputed Plaintiffs' valuation of the custom guitar. Although Ibanez may have custom-built the guitar for Defendant, Defendant testified that guitars similar to his guitar are now manufactured by Ibanez and not custom. As a result, Defendant testified that his guitar is presently not more valuable than the manufactured guitars.

**H. Defendant's Transfer to His Sister**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

In his March 2016 Schedules, under item no. 7 of his SOFA (payments on debts to insiders), Defendant stated that within one year before the petition date, he did not make any payments on a debt owed to an insider. (Exh. 1, at p. 25.) At the May 27, 2016 meeting of creditors, Defendant disclosed to the Trustee that he had transferred \$13,000 to his sister Gina Cazares. (Exh. 9, at pp. 2, 7–8.) In his March 2017 Schedules, Defendant amended his SOFA by adding under item no. 7 a payment in the amount of \$13,000 to Gina Cazares in January 2016, which he described as repayment of a loan. (Exh. 7, at p. 4.)

***I. Other Alleged Omissions by Defendant***

At the July 17, 2017 meeting of creditors, Defendant disclosed that Jacek Sikora is an owner of a restaurant and guitar store in Poland and a friend of Defendant. In return for monies loaned, Defendant provided Mr. Sikora with free backstage passes to concerts. (Exh. 12, at p. 15.) Although Defendant characterized this exchange as a "loan," he did not provide further details about the nature of the transaction. It is not clear if the money provided by Mr. Sikora is a loan or income received by Defendant. Nor did Defendant state whether this alleged transaction occurred prepetition or postpetition.

In an email dated June 27, 2017, the Trustee's counsel, John Melissinos, wrote to Defendant's counsel, Mr. Smyth, that "With respect to documents, it appears we have all that has been requested except for the item described in my May 31, 2017 letter asking for 'any and all of the Debtor's agreements with "Stitching on Tour."' Please supply this information." (Exh. D.)

***J. Errors of Defendant's Successor Bankruptcy Counsel***

As noted above, Defendant's present counsel Mr. Smyth filed the August 2017 Schedules. In these schedules, Defendant listed the value of his "Song Books and copy rights" as "\$13,000." (Exh. 8, at p. 5.) Mr. Smyth stated that the \$13,000 "valuation" was his mistake and not intended to be a statement of value. Mr. Smyth also stated that he listed Defendant's copyright interests under the wrong subsection, omitted Defendant's list of copyrighted songs, and omitted Defendant's interests in Fear Campaign and Oxidizer, and noted that such property still was disclosed in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

2:30 PM

CONT... Dean Albert Maury Cazares  
earlier-filed schedules.

Chapter 7

**K.** *The Adversary Proceeding*

On May 24, 2016, Plaintiffs filed a complaint against Defendant, seeking a determination that the debt owed by Defendant is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), and a denial of Defendant's discharge pursuant to 11 U.S.C. §§ 727(a)(2) and (a)(4) (the "Complaint"). In the Complaint, Plaintiffs alleged Defendant omitted from his schedules certain income, executory contracts, his equity interests in Oxidizer and Fear Campaign, and his copyrights. (Complaint, ¶ 19.) On November 16, 2016, Defendant filed his answer [doc. 19].

On November 28 and 29, 2017, the Court held trial in this matter. The parties appeared as noted on the record. For the reasons set forth below, Plaintiffs did not meet their burden of demonstrating that the debt owed to them is nondischargeable under 11 U.S.C. § 523(a)(2)(A). Plaintiffs also did not meet their burden of demonstrating that Defendant's discharge should be denied under 11 U.S.C. § 727(a)(2) or (a)(4).

**II. LEGAL STANDARDS**

**A. Burden Of Proof**

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523(a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir. B.A.P. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S. Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

Regarding actions under 11 U.S.C. § 727, the objector to discharge bears the burden to prove by a preponderance of the evidence that the debtor's discharge should be denied under an enumerated ground of § 727(a). *In re Khalil*, 379 B.R. 163, 172 (9th Cir. B.A.P. 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009). In the spirit of the "fresh



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

---

2:30 PM

CONT... **Dean Albert Maury Cazares**

**Chapter 7**

start" principles that the Bankruptcy Code embodies, claims for denial of discharge are liberally construed in favor of the debtor and against the objector to discharge. *Id.*

**B. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (9th Cir. B.A.P. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Representations made without an intent to perform satisfy the first three requirements of § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise can also be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (9th Cir. B.A.P. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have an intent to perform at the time he made the representation. *Matter of Bercier*, 934 F.2d 689, 691–92 (5th Cir. 1991) ("A mere promise to be executed in the future is not sufficient to make a debt nondischargeable, even though there is no excuse for the subsequent breach.") (citations omitted). Partial performance under an agreement may be evidence that refutes an allegation that there

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

was no intent to perform at the time the agreement was made. *See Webb v. Isaacson (In re Isaacson)*, 478 B.R. 763, 776–77 (Bankr. E.D. Va. 2012).

Section 523(a)(2)(A) requires that the damage to the creditor be proximately caused by the debtor's fraud. *In re Sabban*, 600 F.3d 1219, 1223 (9th Cir. 2010) (explaining that the debtor will not receive a discharge of debts "resulting from" or "traceable" to fraud). "Further, as the Supreme Court explained in *Field*, a court may turn to the Restatement (Second) of Torts (1976), 'the most widely accepted distillation of the common law of torts,' for guidance on this issue." *In re Russell*, 203 B.R. 303, 313 (Bankr. S.D. Cal. 1996) (citing *Field v. Mans*, 516 U.S. 59, 70 (1995)).

"Turning to the Restatement, proximate cause entails (1) causation in fact, which requires a defendant's misrepresentations to be a 'substantial factor in determining the course of conduct that results in [the plaintiff's] loss,' § 546; and (2) legal causation, which requires the plaintiff's loss to have been 'reasonably expected to result from the reliance,' § 548A." *Id.* (citing *In re Siriani*, 967 F.2d 302, 306 (9th Cir. 1992), *as amended* June 29, 1992).

"In California, in the absence of a fiduciary relationship, recovery for the tort of fraud is limited to the actual, out-of-pocket damages suffered by the plaintiff." *Auble v. Pac. Gas & Elec. Co.*, 55 F. Supp. 2d 1019, 1022 (N.D. Cal. 1999). "[A] creditor seeking nondischargeability under section 523(a)(2)(B) must show that it had valuable collection remedies at the time it [relied on the debtor's representations], and that those remedies later became worthless." *Siriani*, 967 F.2d at 305. Although *Siriani* specifically addresses nondischargeability under § 523(a)(2)(B), the *Rubin* elements apply equally to claims under §§ 523(a)(2)(A) and (B). *Id.* at 304.

**C. 11 U.S.C. § 727(a)(2)**

Section 727(a)(2)(A)–(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property . . . has transferred, removed, destroyed, mutilated, or concealed . . . (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor . . .". *In re Beauchamp*, 236 B.R. 727, 732 (9th Cir. B.A.P. 1999). The transfer must occur within one year prepetition. *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997). Lack of injury to creditors is irrelevant under § 727(a)(2). *In re Bernard*, 96 F.3d 1279, 1281–82 (9th Cir. 1996).

Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753–54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986) (quoting *Devers*, 759 F.2d at 753–54).

In examining the circumstances of a transfer under § 727(a)(2), certain "badges of fraud" may support a finding of fraudulent intent. These factors, not all of which need be present, include (1) a close relationship between the transferor and the transferee; (2) that the transfer was in anticipation of a pending suit; (3) that the transferor Debtor was insolvent or in poor financial condition at the time; (4) that all or substantially all of the Debtor's property was transferred; (5) that the transfer so completely depleted the Debtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and (6) that the Debtor received inadequate consideration for the transfer. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1200 (9th Cir. 2010).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015).

**D. 11 U.S.C. § 727(a)(4)**

Pursuant to 11 U.S.C. § 727(a)(4), "the Court shall grant the debtor a discharge unless:

[T]he debtor knowingly and fraudulently, in or in connection with the case—

- (A) made a false oath or account;
- (B) presented or used a false claim;
- (C) gave, offered, received, or attempted to obtain money, property,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Dean Albert Maury Cazares**

**Chapter 7**

or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs[.]

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (9th Cir. B.A.P. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

"A fact is material 'if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property.'" *Khalil*, 379 B.R. at 173 (quoting *In re Wills*, 243 B.R. at 62). An omission or misstatement that "detrimentally affects administration of the estate" is material. *Retz*, 606 F.3d at 1198; *Wills*, 243 B.R. at 63 (citing 6 Lawrence P. King et al., *Collier on Bankruptcy* ¶ 727.04[1][b] (15th ed. rev.1998)).

A debtor's voluntary disclosure of transactions not listed on schedules at the § 341(a) meeting of creditors may show a lack of intent to defraud under § 727(a)(4). *Baker v. Mereshian (In re Mereshian)*, 200 B.R. 342, 347 (9th Cir. B.A.P. 1996); *see also Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1294 (10th Cir. 1997); *Isaacson*, 478 B.R. at 784. In addition, "[e]vidence that demonstrates confusion or a believable lack of understanding on the part of a debtor may . . . militate against an inference of fraudulent intent." *Isaacson*, 478 B.R. at 784.

"To deny a debtor's discharge under Section 727(a)(4)(B), the debtor must have presented or used an inflated or fictitious claim in [or in connection to] a bankruptcy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

case, with intent to defraud." *In re Gollomp*, 198 B.R. 433, 439 (S.D.N.Y. 1996). The act of listing a claim of exemption is not a "claim" within the meaning of § 727(a)(4)(B). *See Garcia v. Garcia (In re Garcia)*, 168 B.R. 403, 407 (D. Ariz. 1994).

Under 11 U.S.C. § 727(a)(4)(D), "[a] knowing and fraudulent failure to turn over . . . documents [to the trustee] is grounds for denial of discharge." *In re Robson*, 154 B.R. 536, 540 (Bankr. E.D. Ark. 1993). "The Trustee and the creditors are entitled to honest and accurate information 'showing what property passed through the debtor's hands during the period prior to his bankruptcy.' . . . All books and records which are material to an understanding of the debtor's financial condition and transactions are within the scope of section 727(a)(4)(D). . . . The failure to comply with their affirmative duty to cooperate by opening all records for inspection is grounds for denial of discharge." *Id.* (citations omitted).

### **III. DISCUSSION**

Defendant and Mr. Wolbers were the only individuals who testified at trial. The Court found Mr. Wolbers' and Defendant's testimony credible in light of the supporting documents admitted into evidence. For the reasons stated below, Plaintiffs have not met their burden of proof pursuant to 11 U.S.C. §§ 523(a)(2), 727(a)(2), or 727(a)(4).

#### **A. 11 U.S.C. § 523(a)(2)(A)**

Plaintiffs have not met their burden of proving that the debt owed to Plaintiffs is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). [FN5]

The evidence shows that Defendant made a payment to Plaintiffs in partial satisfaction of his obligation under the Settlement Agreement. In the Pre-Trial Stipulation, the parties stipulated that Defendant paid approximately \$90,000 to Plaintiffs within twelve months after the Settlement Agreement was executed. (Pre-Trial Stipulation, ¶ 4.) Such partial performance militates against a finding that Defendant entered into the Settlement Agreement without an intent to perform.

In addition, Plaintiffs have not established that Defendant had no intent of performing under the subsequent Stipulated Judgment. Under the terms of the Stipulated Judgment, the Settlement Agreement was to remain in full force and effect, and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

judgment in the amount of \$214,307.24 was to be entered against Defendant, Mr. Bell, and Oxidizer, along with an award of attorney's fees to Plaintiffs. On February 17, 2016, Plaintiffs filed the Attorney's Fees Motion, seeking \$681,060. Instead of contesting the Attorney's Fees Motion in state court, Defendant filed his bankruptcy petition.

At trial, Plaintiffs argued that Defendant's failure to contest the Attorney's Fees Motion and his subsequent bankruptcy petition demonstrates that Defendant agreed to the entry of the Stipulated Judgment without an intent to pay. Defendant responded that, when he agreed to the entry of the Stipulated Judgment, Defendant intended to pay the \$214,307.24 by going on tour. According to Defendant, he filed his bankruptcy petition only after Plaintiffs' state court counsel filed the Attorney's Fees Motion, seeking approximately \$681,000, at which time Defendant realized he would be incapable of paying that amount. (Cazares Decl., ¶ 5.) Plaintiffs have not established that Defendant had an intent to deceive Plaintiffs at the time Defendant agreed to the entry of the Stipulated Judgment.

Furthermore, Plaintiffs have not established detrimental reliance or damages arising from Defendant's actions. Plaintiffs did not show that they gave up valuable collection remedies after the Settlement Agreement or the entry of the Stipulated Judgment, or that such remedies later became worthless. *See Siriani*, 967 F.2d at 305.

***B. 11 U.S.C. § 727(a)(2)***

Plaintiffs have not met their burden of proving under 11 U.S.C. § 727(a)(2) that Defendant transferred \$13,000 to his sister Gina Cazares with the intent to hinder, delay, or defraud creditors or the Trustee.

Regarding Defendant's transfer to his sister, the transfer was made in January 2016, less than two months before the petition date. There is a close relationship between the transferor and transferee. However, Plaintiff did not establish any of the other badges of fraud to support a finding that Defendant made the transfer to his sister with an intent to hinder, delay, or defraud creditors or the Trustee. Defendant testified, and the March 2017 Schedules indicate, that the transfer was a repayment of a loan. Plaintiffs presented no evidence to the contrary.

Plaintiffs also contend that Defendant "finally admitted that he concealed [his income]

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares Chapter 7**

from Plaintiffs on October 16, 2015," the date of the Stipulated Judgment. (Plaintiffs' Trial Brief, Doc. 55, at p. 8.) Plaintiffs did not make the required showing that, in breaching the Settlement Agreement, Defendant had the subjective intent to hinder, delay, or defraud Plaintiffs or the Trustee.

**C. 11 U.S.C. § 727(a)(4)**

**1. False Oath (11 U.S.C. § 727(a)(4)(A))**

The evidence presented shows inconsistencies between, and material omissions from, the several sets of schedules filed by Defendant. However, such inconsistencies and omissions do not warrant a denial of discharge under 11 U.S.C. § 727(a)(4).

***Executory contracts.*** At trial, Plaintiffs alleged that Defendant did not list certain executory contracts in his schedules. The agreements with Soulfood Music Distribution, Nuclear Blast, Tanglade LTD, Riot Entertainment Australia, and Freibank show Oxidizer as a counterparty, not Defendant. As such, Defendant was not required to disclose these Oxidizer agreements in his schedules.

Plaintiffs also alleged that Defendant did not disclose in his schedules the venue booking agreements relating to TKO, or the merchandising agreement with Manhead. At the March 17, 2017 meeting of creditors, Defendant stated that he did not have copies of the TKO or Manhead agreements and that he never reviewed them. At trial, Plaintiffs did not establish that Defendant personally entered into the venue booking agreements or the Manhead agreement.

However, Defendant personally did enter into the endorsement agreements with Ibanez and Seymour Duncan, and the BMG/Universal co-publishing agreements. The April 2014 Ibanez agreement expired in April 2015, which was prepetition. This expired agreement did not have to be disclosed in Defendant's schedules. Defendant entered into the August 2016 Ibanez agreement postpetition; this postpetition agreement did not need to be disclosed in Defendant's schedules.

Defendant stated that he had entered into an agreement with Seymour Duncan prepetition and that such agreement had expired. Plaintiffs did not demonstrate that this agreement was still in force as of the petition date. Regarding the postpetition

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

2:30 PM

CONT... **Dean Albert Maury Cazares**

**Chapter 7**

Seymour Duncan agreement, postpetition agreements do not need to be disclosed in a debtor's schedules.

Defendant entered into the BMG/Universal co-publishing agreements prepetition in 2001 and 2003, and he should have disclosed them in his schedules. Although not listing the BMG/Universal co-publishing agreements in his schedules was a material omission, Plaintiffs have not shown that Defendant knowingly or fraudulently omitted these agreements from his schedules. Defendant did not deny the existence of these agreements when questioned by the Trustee at the May 27, 2016 meeting of creditors. Moreover, Defendant disclosed his income from BMG/Universal in his Statement of Current Monthly Income and in Schedule I of his April 21, 2016 Schedules. Any omissions from his Schedule G appear to have been inadvertent.

***Defendant's Royalty Payments from Warner.*** After the Trustee filed a motion for turnover, Defendant was ordered to turn over to the Trustee \$9,122.21 in postpetition royalty payments made by Warner. (*See* case no. 1:16-bk-10543-VK, docs. 89, 95.) [FN6] Notwithstanding the motion for turnover, Plaintiffs have not shown that Defendant knowingly or fraudulently omitted from his schedules any prepetition income from Warner. If Defendant received royalty payments from Warner prepetition, which has not been demonstrated, any omission of such prepetition income, appears to have been inadvertent. [FN7]

***Defendant's Copyright Interests and Interests in Fear Campaign and Oxidizer.*** At trial, Plaintiffs argued that Defendant's August 2017 Schedules listed Defendant's copyright interests under the wrong subsection, omitted Defendant's list of copyrighted songs, and omitted Defendant's interests in Fear Campaign and Oxidizer. Andrew Smyth—who became Defendant's counsel before Defendant filed the August 2017 Schedules—stated at trial that he was responsible for these errors. In his April 21, 2016 Schedules, Defendant disclosed his interest in copyrights to approximately 180 song compositions and listed these copyright interests as having an "Unknown" value. (Exh. 3, at p. 5 and Attachment 26.1.) Defendant also disclosed his 50% ownership interest in Oxidizer and Fear Campaign. (Exh. 3, at p. 4.) Throughout numerous meetings of creditors, Defendant acknowledged his copyright interests and his equity interests in Oxidizer and Fear Campaign. Although Mr. Smyth's preparation and filing of the August 2017 Schedules is representative of carelessness,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

2:30 PM

CONT... **Dean Albert Maury Cazares**

**Chapter 7**

the Court concludes that Defendant did not fraudulently omit his copyright interests and interests in Fear Campaign and Oxidizer from his August 2017 Schedules.

***Defendant's Guitars.*** Plaintiffs argued that Defendant intentionally undervalued his custom-built Ibanez guitar, which they alleged is more expensive than the retail model available in stores. However, Defendant credibly testified that Ibanez currently manufactures non-custom guitars similar to his guitar. Therefore, Defendant does not believe his custom-built guitar is presently more valuable than the manufactured guitars. At trial, Plaintiffs presented no evidence to rebut Defendant's testimony regarding the value of Defendant's guitars. Accordingly, the Court finds that Defendant did not knowingly or fraudulently undervalue his guitars in his schedules.

***Monies Paid to Defendant by Mr. Sikora.*** At the July 17, 2017 meeting of creditors, Mr. Melissinos questioned Defendant specifically regarding money allegedly loaned from Jacek Sikora. Defendant answered Mr. Melissinos's questions regarding Mr. Sikora's identity and whether Defendant had given Mr. Sikora anything in return for the alleged loans. Mr. Melissinos did not ask any further questions regarding the amount of money exchanged or the dates of such transactions. Plaintiffs did not establish if Mr. Sikora transferred the money to Defendant within one year before the petition date, or after the petition date. Nor did Plaintiffs establish whether such monies were loans or income.

***Defendant's Alleged "False Claims."*** Plaintiffs argued that (i) after he paid \$90,000 to Plaintiffs, Defendant made a false claim to the state court; (ii) Defendant made a false claim that he would pay them the remaining amount owing under the Settlement Agreement; and (iii) Defendant made a false claim when he said he would pay under the Stipulated Judgment. These do not constitute "false claims" within the context of § 727(a)(4)(B).

Plaintiffs also argued that Defendant's valuation of "Song Books and copy rights" in his August 2017 Schedules was a false claim warranting denial of Defendant's discharge under 11 U.S.C. § 727(a)(4)(B). Plaintiffs apparently mean that Defendant's valuation constitutes a false oath under § 727(a)(4)(A).

In his declaration, Mr. Wolbers stated that he receives approximately \$3,000 bi-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

annually in royalties arising from his copyright interests in the songs he co-created with Defendant under the Fear Factory name. At trial, Plaintiffs argued that because Defendant created more songs under the Fear Factory name, Defendant would have more bi-annual royalty income. As a result, Defendant's valuation of his copyrighted songs in the amount of \$13,000 is much less than their actual value.

Defendant testified that he never discussed the total value of his copyrighted songs with his counsel and could not afford to hire an appraiser. Defendant did not know whether \$13,000 was the total value of his copyrighted songs. Defendant's counsel, Mr. Smyth, stated that the \$13,000 "valuation" was his mistake.

In *U.S. Trustee v. Pynn (In re Pynn)*, 546 B.R. 425 (Bankr. C.D. Cal. 2016), the debtor listed in his schedules a 1966 Porsche 911 ("Porsche") and multiple guitars and bicycles. The debtor listed the value of the Porsche as \$5,000, the collective value of the guitars as \$2,750, and the collective value of the bicycles as \$2,600. A subsequent appraisal valued the Porsche at between \$20,000 and \$45,000, the bicycles at \$7,710, and the guitars at \$6,200. The debtor initially testified at his 341(a) meeting that his valuations were "yard-sale" or "quick-sale" liquidation prices. When questioned further about the guitars and the bicycles, the debtor admitted that on eBay the bicycles would sell for between \$5,350 and \$7,450, and the guitars would sell for between \$5,500 to \$6,400. The chapter 7 trustee ultimately sold the Porsche at auction for \$83,000, sold the bicycles to the debtor for \$5,450, and sold the guitars and other musical equipment to the debtor for \$3,900. *Id.* at 427–28. At trial, the debtor testified that he was meticulous collector who kept careful records of his bicycles and guitars, along with their component parts. *Id.* at 429. Although the debtor claimed the valuations in his schedules were an honest mistake, the court found that the debtor was not credible and that he had intentionally, knowingly, and fraudulently undervalued the Porsche, guitars, and bicycles. *Id.* at 430, 432.

Unlike the debtor in *Pynn*, Defendant did not initially undervalue his songs and copyrights. In his April 21, 2016 Schedules, Defendant listed his copyright interests as having an "Unknown" value. These schedules were prepared by Mr. Landsberg, Defendant's former bankruptcy counsel. Mr. Smyth filed the August 2017 Schedules, where he erroneously listed the "Song Books and copy rights" under the incorrect

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

category (trusts, equitable, or future interests in property) and did not attach the previous list of song compositions. Defendant credibly testified that his copyrights were never appraised, and that he did not know the value of his copyrights. Defendant's testimony is consistent with the "Unknown" value of the copyrights as stated in his April 21, 2016 Schedules. Based on the evidence submitted, with respect to the value of his copyrights, Defendant did not knowingly or fraudulently make a false oath with intent to defraud.

In light of the foregoing, the Court will not deny Defendant's discharge pursuant to 11 U.S.C. § 727(a)(4)(A).

**2. Withholding of Documents (11 U.S.C. § 727(a)(4)(D))**

Plaintiffs have not established that Defendant knowingly and fraudulently withheld documents from the Trustee relating to Defendant's property or financial affairs. Several meetings of creditors and repeated requests from the Trustee were required before Defendant provided sufficient documentation to the Trustee. However, as noted above, on June 27, 2017, Mr. Melissinos sent an email to Mr. Smyth stating that Defendant had complied with all documents requests save for agreements relating to the entity Stitching on Tour. (Exh. D.) At the July 17, 2017 meeting of creditors, Defendant agreed to provide any agreements relating to Stitching on Tour. (Exh. 12, at p. 20–21.) Defendant also testified that he has completely disclosed his financial condition to the Trustee. (Cazares Decl., ¶ 14.)

In some circumstances and absent evidence of bad faith, a debtor's belated disclosure of documents to a bankruptcy trustee may not warrant denial of discharge pursuant to § 727(a)(4)(D). In *Silverman v. Katz (In re Katz)*, 146 B.R. 617 (Bankr. E.D.N.Y. 1992), involuntary chapter 7 petitions were filed against the debtors, who were not represented by counsel in their bankruptcy until approximately eight months after the order for relief was entered. *Id.* at 618. Although there was a delay of nearly a year before the debtors fully complied with the trustee's document requests, the court found that summary judgment was not warranted on the trustee's § 727(a)(4)(D) claim. *Id.* at 619, 621. Because the debtors had complied with the trustee's requests

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

in good faith once represented by counsel, the court found that an issue of material fact existed as to whether debtors' conduct constituted a knowing and fraudulent failure to turn over documents to the trustee. *Id.* at 621.

In *Bay State Milling Co. v. Martin (In re Martin)*, 141 B.R. 986 (Bankr. N.D. Ill. 1992), an examiner was appointed to investigate an individual chapter 11 debtor's financial affairs. The examiner's preliminary report found that the debtor had failed to preserve adequate recorded information from which the debtor's financial condition and business transactions might be ascertained. At trial, the examiner stated that he ultimately received all the documents he requested from the debtor. *Id.* at 991. The debtor maintained throughout the proceeding that his records were adequate. *Id.* at 998. Despite the "need for prodding" by the examiner, the court found that no material documents were actually withheld from the examiner because such documents were eventually produced. *Id.* at 998-99.

Although Defendant did not expeditiously comply with all of the Trustee's document requests, Plaintiffs did not present evidence that the Trustee requested documents, and that Defendant denied their existence or withheld them. Defendant introduced into evidence the email from Mr. Melissinos stating that Defendant had complied with all other document requests apart from the Stitching on Tour documents, which Defendant agreed to produce. Based on the evidence submitted, Plaintiffs have not established that Defendant knowingly and fraudulently withheld documents from the Trustee relating to Defendant's property or financial affairs.

Accordingly, the Court will not deny Defendant's discharge pursuant to 11 U.S.C. § 727(a)(4)(D).

#### **IV. CONCLUSION**

The debt owed to Plaintiffs arising from the 2015 Stipulated Judgment, to the extent that such debt exists, is not nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Defendant will not be denied a chapter 7 discharge pursuant to 11 U.S.C. §§ 727(a)(2) or (a)(4).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Defendant must submit a proposed judgment within seven (7) days.

**Footnotes**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. Unless this decision references a document from these dockets or an exhibit, the facts are derived from testimony provided at trial.
2. At trial, the parties stipulated to the admission of all Exhibits 1 through 94. The parties further stipulated to the admission of Exhibits A through D as follows:
  - *Exhibit A*: A copy of a July 18, 2016 email from Defendant to former counsel Casey Donoyan re: music publishing income from 2013 through 2015;
  - *Exhibit B*: A copy of a June 29, 2017 email from John Melissinos to Andrew Smyth re: status of Defendant's compliance with the Trustee's request for bank statements;
  - *Exhibit C*: A copy of a June 28, 2017, email from John Melissinos to Andrew Smith re: status of Defendant's compliance with the Trustee's request for bank statements; and
  - *Exhibit D*: A copy of a June 27, 2017 email from John Melissinos to Andrew Smyth re: status of Defendant's compliance with the Trustee's document requests.
3. The initial 341(a) meeting in Defendant's bankruptcy case was set for March 25, 2016 and continued numerous times. The § 341(a) meetings referenced herein are meetings for which transcripts were introduced into evidence at trial. A continued meeting of creditors is currently set for February 20, 2018.
4. Mr. Herrera's declaration is substantively identical to Mr. Wolbers' declaration. In addition, Mr. Herrera elected not to attend trial and sit for cross-examination. Accordingly, the Court will not rely on the statements in Mr. Herrera's declaration for purposes of this ruling.
5. In support of their claim under § 523(a)(2)(A), Plaintiffs rely on *Cohen v. de la Cruz*, 523 U.S. 213, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998). However,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 14, 2018

Hearing Room 301

2:30 PM

CONT...

**Dean Albert Maury Cazares**

**Chapter 7**

*Cohen* is not applicable to the facts of this case. The debtor in *Cohen* had charged his tenants excessive rents, which the local rent administrator ordered him to refund. Instead, the debtor filed a chapter 7 petition. The tenants filed an adversary proceeding against the debtor, seeking a determination that the debt owed to them was nondischargeable under § 523(a)(2)(A), along with treble damages, attorney's fees, and costs pursuant to state statute. The Supreme Court held that a finding of nondischargeability under § 523(a)(2)(A) prevented discharge of all liability arising from the debtor's fraud, including the requested treble damages and attorney's fees and costs. *Cohen* does not address whether partial performance under a settlement agreement or filing a bankruptcy petition after agreeing to entry of a stipulated judgment constitutes fraud within the context of § 523(a)(2)(A).

6. On February 22, 2017, the Trustee filed adversary proceeding no. 1:17-ap-01017-VK against Defendant, Fear Campaign, Oxidizer, and other parties. In her amended complaint, the Trustee seeks, among other relief, recovery of postpetition transfers to Defendant and other parties. (Case no. 1:17-ap-01017-VK, doc. 36.)
7. Defendant disclosed his co-publishing agreements with BMG/Universal. If Warner is a successor-in-interest to BMG/Universal—as Plaintiffs suggest in their reply trial brief—then Defendant disclosed this prepetition income in his schedules.

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

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Ian Landsberg

**Defendant(s):**

Dean Albert Maury Cazares

Pro Se

**Plaintiff(s):**

Christian Olde Wolbers

Represented By  
Larry Castruita

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 14, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Raymond Herrera

Represented By  
Larry Castruita

**Trustee(s):**

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 15, 2018

Hearing Room 301

1:00 PM

1:14-15621 Edward D. Roane

Chapter 11

#1.00 Post confirmation status conference re chapter 11 case

fr. 6/18/15; 10/22/15; 12/3/15; 12/17/15; 2/4/16; 6/16/16; 12/15/16; 4/20/17;  
8/17/17

Docket 1

**Tentative Ruling:**

Based on the *Chapter 11 Fifth Post-Confirmation Status Report* [doc. 191], the Court will continue the post-confirmation status conference to **August 16, 2018 at 1:00 p.m.** On or before **August 2, 2018**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. The Court will vacate the continued post-confirmation status conference if an order granting the reorganized debtor a final decree and closing the case is entered prior to the continued hearing date.

Appearances on February 15, 2018 are excused.

**Party Information**

**Debtor(s):**

Edward D. Roane

Represented By  
Michael Jay Berger



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**1:15-12768 Luis Gutierrez and Elizabeth Gutierrez**

**Chapter 11**

**#2.00** Post confirmation status conference re chapter 11 case

fr. 10/8/15; 11/5/15; 5/5/16; 6/16/16; 8/25/16; 9/8/16; 10/13/16; 4/20/17; 8/17/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order for final decree entered 10/18/17.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Luis Gutierrez

Represented By  
Anthony Obehi Egbase

**Joint Debtor(s):**

Elizabeth Gutierrez

Represented By  
Anthony Obehi Egbase

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 15, 2018

Hearing Room 301

1:00 PM

1:16-10073 Shahla Dowlati

Chapter 11

#3.00 First amended disclosure statement hearing re individual debtor's disclosure statement in support of plan of reorganization

fr. 12/21/17

Docket 288

**Tentative Ruling:**

At the prior hearing, the Court instructed the debtor to file an amended disclosure statement with a chart of projected *monthly* income, expenses, plan payments and resulting net income from the effective date of the plan. The debtor has provided this Court with a Five Year Projection of Income and Expenses (Exhibit H) (the "Projection"), but the Projection is on a yearly basis, not a monthly basis. **In connection with confirmation of the chapter 11 plan**, along with the confirmation brief (discussed below), the debtor must file a chart of projected *monthly* income, expenses, plan payments and resulting income *for a period of one year from the effective date of the plan*, along with a declaration in support of that projection.

Proposed dates and deadlines regarding "Individual Debtor's Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "First Amended Individual Debtor's Disclosure Statement in Support of Plan of Reorganization:"

Hearing on confirmation of the Plan: **April 12, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **February 22, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Shahla Dowlati**

**Chapter 11**

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **March 22, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations, **the projections mentioned above**, and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **April 2, 2018.**

Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

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

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#4.00** Status conference re chapter 11 case

fr. 3/3/16; 9/15/16; 11/10/16; 2/16/17; 4/20/17; 7/13/17; 10/5/17; 12/21/17

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11847 Cheryl Placencia**

**Chapter 11**

**#5.00** Status conference re: chapter 11 voluntary petition  
fr. 8/24/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 1/5/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#6.00** U.S. Trustee's motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

fr. 11/16/17; 12/14/17

Docket 51

**Tentative Ruling:**

The Court will order the appointment of a chapter 11 trustee.

**I. BACKGROUND**

On September 12, 2017, AAA Nursing Services Inc. (the “Debtor”) filed a voluntary chapter 11 petition. The Debtor is a health care provider that offers home care services to patients.

On September 15, 2017, the United States Trustee (the “UST”) and the Debtor filed a *Stipulation for the Appointment of a Patient Care Ombudsman* (the “Ombudsman Stipulation”) [doc. 4-1]. On September 29, 2017, the Court entered an order approving the Ombudsman Stipulation [doc. 40]. Constance Doyle was appointed the patient care ombudsman (the “Ombudsman”) in the Debtor’s case [doc. 42].

On September 15, 2017, the Internal Revenue Services (the “IRS”) filed proof of claim 1-1, reflecting a secured claim in the amount of \$255,482.02. The IRS’s claim arose from eight Notices of Federal Tax Lien (the “Notices”) covering the period between 2016 and 2017. The IRS recorded the Notices with the Los Angeles County Recorder between January and August 2017.

On September 15, 2017, the Debtor and the IRS filed a stipulation for adequate protection and use of cash collateral (the “IRS Stipulation”) [doc. 10]. The IRS Stipulation provided that the Debtor was permitted to use the IRS’s cash collateral, subject to certain restrictions and payment of adequate protection payments to the IRS. The IRS Stipulation further provided that “The Debtor must remain post-petition current on all tax filing requirements and pay all post-petition taxes as they come due, including timely making federal payroll tax deposits and estimated income tax

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT... AAA Nursing Services Inc.**

**Chapter 11**

payments." (IRS Stipulation, ¶ 18.) On September 29, 2017, the Court entered an order approving the IRS Stipulation [doc. 33].

On October 20, 2017, the UST filed a *Motion Under 11 U.S.C. § 1112(b) to Dismiss or Convert Case with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* (the "Motion") [doc. 51]. In the Motion, the UST alleged that in violation of UST requirements, the Debtor has not provided the following documents and/or reports:

- A. Sufficient evidence of closing of all pre-petition bank accounts including: closing bank statements and all bank account information required by the Declaration Regarding Compliance;
- B. Sufficient evidence of opening and maintenance of debtor-in-possession bank accounts including: a voided debtor-in-possession check;
- C. Proof of appropriate workers compensation insurance coverage including declaration pages and evidence that the Office of the U.S. Trustee has been added to receive notice regarding each insurance policy;
- D. Proof of required certificates and licenses, including a city business license;
- E. Employee Benefit Plan Questionnaire (Form USTLA-8);
- F. Copies of the debtor's 2016 federal tax return; and
- G. The Monthly Operating Report ("MOR") for September 2017.

On November 2, 2017, the Debtor filed an opposition to the Motion [doc. 65] and its September 2017 MOR [doc. 64]. On November 16, 2017, the Debtor filed its October 2017 MOR [doc. 69] and the *Declaration of Gary L. Jarvis II*, which attached a copy of a workers compensation insurance declarations page [doc. 68].

At the November 16, 2017 hearing, the Court continued the hearing on the Motion to December 14, 2017. At the December 14, 2017 hearing, the Court further continued the hearing to February 15, 2018 and instructed the UST to file further evidence in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 15, 2018

Hearing Room 301

1:00 PM

CONT... AAA Nursing Services Inc.  
support of the Motion.

Chapter 11

On January 17, 2018, the Debtor filed its November 2017 MOR [doc. 93]. The Debtor reported no expenses paid for November 2017, and \$244,434.12 in apparent accounts receivables from insurance companies and government programs. (Doc. 93, Exh. D.)

On January 25, 2018, the UST filed a *Supplement to Motion to Dismiss or Convert Case* (“Supplement”) [doc. 96]. In the Supplement, the UST stated that the Debtor did not timely file a December 2017 MOR. Also, the Debtor has not provided a “list of unpaid bills” in its November 2017 MOR, and the UST has not waived this requirement. The Debtor has 36 employees and reports that it did not pay any expenses in November. (Declaration of Russell Clementson, ¶¶ 3–4; Exh. 1.) As a result of the failure to timely file MORs, the UST has not been able to evaluate the Debtor’s financial condition. The UST requests conversion of the Debtor’s case, or, in the alternative, the appointment of a chapter 11 trustee.

On February 5, 2018, the Ombudsman filed a *Revised Professional Fee Statement* [doc. 97], indicating that a check tendered by the Debtor to the Ombudsman in the amount of \$3,335 was returned unpaid.

## II. DISCUSSION

11 U.S.C. § 1112(b) provides in pertinent part:

(1) Except as provided in paragraph (2) and subsection (c), 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 . . . is in the best interests of creditors and the estate.

. . .

(4) For purposes of this subsection, the term ‘cause’ includes . . .

(A) substantial or continuing loss to or diminution of the estate and the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**AAA Nursing Services Inc.**

**Chapter 11**

absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

...

(F) 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]

...

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any) . . . .

“‘[T]he Code contains a non-exclusive list of examples of cause in § 1112(b)(4).” *In re Serron Investments*, 2012 WL 2086501, at \*5 (9th Cir. B.A.P. June 8, 2012); *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014) (“‘Cause’ is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive.”). The movant bears the burden of establishing by a preponderance of the evidence that cause exists. *In re Sullivan*, 522 B.R. 604, 614 (9th Cir. B.A.P. 2014).

Motions to dismiss under 11 U.S.C. § 1112(b) require a two-step analysis. “First, it must be determined that there is ‘cause’ to act. Second, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *In re Nelson*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

Pursuant to 11 U.S.C. § 1104,

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**AAA Nursing Services Inc.**

**Chapter 11**

management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

"Cause and best interest of creditors and other parties are separate and independent bases for granting a motion to appoint a trustee under 11 U.S.C. § 1104(a)." *Id.* "The list of the enumerated 'causes' under Section 1104(a)(1) of the Bankruptcy Code, 11 U.S.C., is nonexhaustive." *In re Pasadena Adult Residential Care, Inc.*, 2015 WL 6443216, at \*14 (Bankr. C.D. Cal. Oct. 23, 2015) (citing *In re Bellevue Place Assocs.*, 171 B.R. 615, 622–23 (Bankr. N.D. Ill. 1994)).

Pursuant to 11 U.S.C. § 105(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 or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Here, pursuant to 11 U.S.C. § 1112(b)(4)(A), (B), (F) and (H), there is cause to dismiss or convert this case. There appears to be "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation" and "gross mismanagement of the estate." The Debtor is a health care provider subject to periodic monitoring by the Ombudsman. The Debtor has 36 employees, yet the November 2017 MOR reflects that the Debtor paid no expenses that month. Among other things, this indicates that the Debtor has not acted in accordance with the IRS Stipulation. Moreover, the Debtor's check to the Ombudsman in the amount of \$3,335 was returned unpaid. If the Debtor is not paying its expenses, its nursing staff may seek other employment and the quality of patient care may deteriorate. In addition, the Debtor has not timely complied with reporting requirements and has not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT... AAA Nursing Services Inc.**

**Chapter 11**

timely provided information reasonably requested by the UST.

For the reasons stated above, there also appears to be cause to appoint a chapter 11 trustee pursuant to 11 U.S.C. § 1104(a)(1). In addition, appointment of a chapter 11 trustee is in the best interests of creditors pursuant to 11 U.S.C. § 1104(a)(2). The Debtor appears to have \$244,434.12 in outstanding accounts receivable from insurance companies and government programs. An appointed chapter 11 trustee could operate the Debtor's business, ensure the Debtor's compliance with UST reporting requirements, the IRS Stipulation, and post-petition tax obligations, and potentially reorganize the Debtor.

**III. CONCLUSION**

The Court will appoint a chapter 11 trustee.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**1:10-17214 Darin Davis**

**Chapter 7**

**#7.00** Trustee's motion to approve compromise

Docket 242

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#8.00 Debtor's motion for authority to incur secured debt**

fr. 1/18/18

Docket 440

**Tentative Ruling:**

In light of the motion to continue the hearing [doc. 440], the Court will continue this hearing to **2:00 p.m. on March 15, 2018.**

Appearances are excused on February 15, 2018.

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#9.00** Application by debtor and debtor in possession to employ James J. Little and Trial Advocacy Group, LLC as special litigation counsel and approval of hourly fee

fr. 1/18/18

Docket 428

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14742 BaseNet, LLC**

**Chapter 7**

**#10.00** Chapter 7 Trustee's Motion Objecting to Claim of Jack N. Rudel,  
as Trustee of the Arh Trust (Claim No. 18-1)

fr. 11/2/17; 11/9/17; 2/8/18

Docket 197

**Tentative Ruling:**

The Court will sustain the chapter 7 trustee's objection to the claim (the "Objection") [doc. 197] filed by ARH Trust ("ARH").

**I. BACKGROUND**

On November 9, 2017, the Court held a hearing on the Objection and issued a tentative ruling sustaining the Objection (see below). At that time, ARH requested a continuance of the hearing to give ARH an opportunity to submit additional documentation in support of its claim against the estate. As a result, the Court continued the hearing for three months.

Following that hearing ARH could have obtained discovery pursuant to Federal Rule of Bankruptcy Procedure 9014(c), which provides that the rules governing discovery in adversary proceedings also apply in contested matters, such as the Objection. As such, ARH's contention that ARH was not permitted to take depositions of pertinent witnesses at Wells Fargo is inaccurate.

On January 11, 2018, ARH filed a supplemental brief (the "Supplemental Brief") [doc 205]. To the Supplemental Brief, ARH attached documentation evidencing a loan between ARH and Opus Bank as well as an assignment of ARH's deposit account to Opus Bank. ARH also attached emails, but did not properly lay a foundation regarding the origin and substance of the emails. ARH did not provide any agreement between Wells Fargo and ARH, or between the debtor and ARH. On January 25, 2018, the chapter 7 trustee (the "Trustee") filed his supplemental brief [doc. 206], asserting that ARH did not provide any documentation establishing a claim against the estate.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

On February 7, 2018, ARH filed an additional reply (the "Reply") [doc. 207]. On February 8, 2018, the Trustee filed a motion to strike the Reply (the "Motion to Strike") [doc. 208]. For the reasons set forth below, the Court will sustain the Objection and incorporate the tentative ruling from November 9, 2017 into this ruling.

## **II. ANALYSIS**

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the *prima facie* validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, the Trustee came forward with sufficient evidence and argument to defeat the claim filed by ARH. The Trustee supported the objection with declarations from the debtor's General Manager, the debtor's Certified Public Accountant and the debtor's Chief Financial Officer. Objection, Exhibit B. Each of these witnesses testified that they had never seen any documents, agreements, correspondence, checks or wire transfers involving ARH. *Id.* The burden then reverted to ARH to prove the validity



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

of its claim by a preponderance of the evidence. *Lundell*, 223 F.3d at 1039. ARH did not meet this burden, and did not meet its "ultimate burden of persuasion." *Id.*

Despite the opportunity to present new evidence and clarify the record through the Supplemental Brief, ARH's arguments remain unclear and the documents provided to the Court do not establish a claim against the debtor's estate. ARH alternates between calling itself a guarantor, a secondary applicant to the letter of credit issued by Wells Fargo (the "LOC") and a party whose account at Opus Bank was offered as security for the LOC.

In its original opposition to the Objection, ARH asserted that it guaranteed the LOC. The Court provided a detailed ruling regarding why ARH had not satisfied the Statute of Frauds or otherwise established that a guaranty agreement existed between ARH, the debtor and Wells Fargo.

The new argument presented by ARH in the Supplemental Brief is that ARH is a second applicant to the LOC. Pursuant to Cal. Comm. Code § 5102(a)(2), an applicant "means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer." ARH asserts that, as a "secondary applicant," it is subrogated to the rights of Wells Fargo pursuant to Cal. Comm. Code § 5117(b), which provides: "An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subdivision (a)."

ARH is correct that secondary applicants/obligors, as contemplated by Cal. Comm. Code §§ 5102(a)(2) and 5117(b), may have subrogation and equitable rights of reimbursement under California law. For instance, in *F.D.I.C. v. Yacoobian*, 2010 WL 2731293 (C.D. Cal. Jul. 7, 2010), the defendant requested a letter of credit from Security Pacific Bank ("SPB") in favor of Credit Suisse Premium Finance LLC ("Credit Suisse") as beneficiary. *Yacoobian*, 2010 WL 2731293, at \*1. However, Credit Suisse requested a letter of credit from a better capitalized bank than SPB. *Id.*, at \*2. As such, both the defendant and SPB applied to City National Bank ("City National"), which agreed to issue a letter of credit in favor of Credit Suisse. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

As part of the application, *both* SPB and the defendant signed an "Irrevocable Standby Letter of Credit Application at the Request of Another Bank" and a "Letter of Credit Agreement." *Id.* City National required SPB to enter into the agreement as a condition to issuing the letter of credit, and the agreement provided that SPB and the defendant were jointly and severally liable to immediately reimburse City National for all amounts paid by City National on a demand on the letter of credit. *Id.*

Subsequently, after Credit Suisse drew down on the letter of credit issued by City National, City National sought and obtained reimbursement from SPB. *Id.*, at \*2-3. The Federal Deposit Insurance Corporation (the "FDIC"), acting as receiver for SPB, sued the defendant to recover the amount SPB paid to City National. *Id.*, at \*3. The court found that, by paying City National, SPB "satisfied [the defendant's] obligation to [City National]" and that SPB's "reimbursement obligation under the Letter of Credit Agreement was merely secondary, while [the defendant's] was primary." *Id.*, at \*4. As a result, the court held that the defendant was liable to reimburse the FDIC under the doctrine of equitable indemnity. *Id.* The court also held that the defendant was liable to the FDIC under the theory of contribution because SPB and the defendant were joint obligors, but SPB's payment to City National was more than its share of joint liability. *Id.*

The court then addressed subrogation under Cal. Comm. Code § 5117(b). *Id.* The court found that "the roles of the parties to the [letter of credit] were as follows: 1) SPB and [the defendant] were each an 'applicant'; 2) [City National] was the 'issuer'; and 3) [Credit Suisse] was the 'beneficiary.'" *Id.* (citing Cal. Comm. Code §§ 5102(a)(2), (a)(3) and (a)(9)). In light of SPB's role as a secondary applicant, the court found that the FDIC, as receiver for SPB, obtained subrogation rights under Cal. Comm. Code § 5117(b) once SPB reimbursed City National for the payments City National made pursuant to the letter of credit agreement. *Id.* The court further held that, although the letter of credit agreement did not have explicit language regarding SPB's rights of reimbursement, California law provided rights of indemnity, contribution and subrogation for secondary obligors like SPB. *Id.*, at \*5.

Here, if ARH was in a similar position to SPB, it also would have the same rights under California law. However, ARH's characterization of the transaction(s) at issue here has been inconsistent and unsupported by the evidence provided by ARH.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

Although ARH now claims it is a "secondary obligor" like SPB, the LOC does not designate ARH (or any other party) as a secondary applicant. The only indication that ARH had any involvement with the LOC is the document titled "Irrevocable Standby Letter of Credit Invoice Settlement Advice," attached to ARH's original opposition to the Trustee's objection to its claim. Opposition [doc. 201], Exhibit 4. That document, however, does not reflect that ARH is an applicant or an obligor. Instead, the document merely includes Opus Bank's name and address. There is no information about the nature of the transaction with Opus Bank, if any. ARH is not mentioned at all. The inclusion of Opus Bank's name and address is not conclusive evidence of ARH's role as a secondary obligor. As far as the Court can tell, ARH did not sign any letter of credit agreement, as SPB did in *Yacobian*, and there is no evidence regarding the precise nature of ARH's involvement with arranging the LOC with Wells Fargo.

The new evidence provided by ARH in support of the Supplemental Brief also does not support a finding that ARH entered into an agreement with either Wells Fargo or the debtor, or the nature of any such agreement. Supplemental Brief, Exhibit A. This time, ARH provides a "Disbursement Request and Authorization," which reflects a loan from Opus Bank to ARH. *Id.* Although this document states that the purpose of the loan is for the "Stand-by Letter of Credit for the benefit of" the debtor, the document is not signed by the debtor or Wells Fargo, nor does the transaction involve either the debtor or Wells Fargo. ARH also attaches an "Assignment of Deposit Account," through which ARH apparently designated its deposit account as collateral securing the loan from Opus Bank to ARH. *Id.* Again, this transaction does not involve the debtor or Wells Fargo.

Moreover, it is unclear who sent or received the new emails provided by ARH. The emails are not appropriately authenticated, and even if they were, the emails refer to a letter of credit that is secured by a deposit account belonging to ARH. *Id.* Rather than demonstrate that ARH was a party to the LOC or a guarantor of the LOC, the emails appear to imply that ARH placed its account as security for the LOC. However, based on the "Assignment of Deposit Account," it appears ARH's account was actually securing the loan from Opus Bank to ARH, the proceeds of which may or may not have reimbursed Wells Fargo for the LOC. To the extent the arrangement was to put up ARH's account as security for the LOC, ARH has not provided a security agreement involving either the debtor or Wells Fargo.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

In its conclusion of the Supplemental Brief, ARH asserts that the debtor was not involved in its agreement (the nature of which agreement remains unclear) with Wells Fargo. Supplemental Brief, p. 8. However, in the Reply, ARH likens the transaction at issue as a loan to the debtor, which falls outside the Statute of Frauds. There, ARH argues that: "In its most simplistic form the agreement between [the debtor] and James Slattery was that Slattery would arrange a letter of credit on behalf of [the debtor] in favor of LAWA, so that [the debtor] could continue to operate its FBO at the Van Nuys Airport. In turn, [the debtor] promised that the Letter of Credit would never be utilized, and if it were, [the debtor] would repay Slattery." Reply, p. 9. There is insufficient evidence at this time to base any claim in favor of ARH on this theory.

In light of the above, ARH has not met its burden of proving its claim by a preponderance of the evidence, because the documentation provided by ARH does not establish a claim against the estate. Consequently, the Court will disallow ARH's claim against the estate.

### **III. CONCLUSION**

Based on the reasons above and the Court's tentative ruling from November 9, 2017, the Court will sustain the Objection. The Court will deny the Motion to Strike. Although the Reply was not timely filed, the Court continued the hearing on the Objection and had time to consider the Reply in its analysis above.

The Trustee must submit an order within seven (7) days.

#### **11/9/2017 Tentative:**

Sustain.

### **I. BACKGROUND**

On November 7, 2013, Wells Fargo Bank, N.A. ("Wells Fargo") issued a letter of credit (the "LOC") in the amount of \$143,093, with an expiration date of November 1, 2014. Opposition [doc. 201], Exhibit 4. The LOC indicated that the beneficiary was Los Angeles World Airports ("LAWA") and the applicant was BaseNet, LLC

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**  
("Debtor"). *Id.*

**Chapter 7**

On September 17, 2014, LAWA informed Wells Fargo that Debtor had violated the terms of its lease and that LAWA would be drawing down on the LOC in the amount of \$47,707.93. Objection, Exhibit A. On September 25, 2014, \$47,707.93 was withdrawn from an Opus Bank account belonging to ARH Trust ("ARH"). *Id.* The description of the withdrawal stated: "LTR OF CREDIT IS0104745U DEMAND." *Id.* On the same day, \$300 was withdrawn from ARH's Opus Bank account, described as: "DRAW FEE LTR OF CREDIT ISO104745U." *Id.*

On October 18, 2014, Debtor filed a voluntary chapter 11 petition. On October 20, 2014, LAWA again informed Wells Fargo that Debtor had violated the terms of its lease and that LAWA would be drawing down on the LOC in the amount of \$95,385.07. Objection, Exhibit A. On October 23, 2014, \$95,685.07 was withdrawn from ARH's Opus Bank account. *Id.* The description of the withdrawal stated: "LTR OF CREDIT IS0104745U DEMAND." *Id.*

On December 18, 2014, the Court entered an order converting this case to a chapter 7 [doc. 57]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On January 13, 2017, Jack N. Rudel, as trustee of ARH, filed proof of claim no. 18-1 in the amount of \$165,647.12. In the proof of claim, ARH indicated its claim is based on "[m]oney loaned." An attachment to the proof of claim itemized the claim as follows:

1. First Claim: Arising from \$47,703.93 account transfer dated September 25, 2014, plus \$7,468.53 in accrued interest between September 25, 2014 and December 27, 2016, plus reimbursement of \$300 draw fee.
2. Second Claim: Arising from \$95,685.07 account transfer dated October 23, 2014, plus \$14,489.59 in accrued interest between October 23, 2014 and December 27, 2016.

Objection, Exhibit A.

On October 2, 2017, the Trustee filed an objection to ARH's claim (the "Objection")

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

[doc. 197], on the basis that ARH has no evidence of a guaranty agreement between Debtor and ARH. On October 19, 2017, ARH filed an opposition to the Objection (the "Opposition") [doc. 201]. To the Opposition, ARH attached a string of emails between Finn Moller, Debtor's principal, and James Slattery, the beneficiary of ARH, as well as emails between Mr. Moller and Heidi Smith, Mr. Slattery's colleague. In relevant part, the emails provide:

- On October 17, 2013, prior to the issuance of the LOC, Mr. Moller writes Mr. Slattery informing him that he's attached the "Los Angeles World Airport Letter regarding the Standby Letter of Credit." Mr. Moller also states that he and Robert Hoover, another individual purportedly working for Debtor, are "very very [sic] thankful." Opposition, Exhibit 1.
- On January 13, 2014, after the issuance of the LOC, Mr. Moller writes Ms. Smith giving her an "update on the lease renewal efforts that [Debtor] has going with LAWA." In this email, Mr. Moller states that "[i]f [Debtor] is not selected by LAWA to be qualified to bid, the LC will be returned. If [Debtor] does qualify, [Debtor] will substitute the standby LC. As you can see, in either instance the Standby LC will be returned to Mr. Slattery shortly." Opposition, Exhibit 5.
- On May 7, 2014, also after the issuance of the LOC, Mr. Moller again emails Ms. Smith to update her on the lease with LAWA. In relevant part, Mr. Moller states that "[t]he Letter of Credit (LC) is in place to secure against a possible failure to pay LAWA rent for 3 months.... Since the LC was placed as security, [Debtor] has always paid the rent to LAWA in the month due and is current with the rent. We very much appreciate the kindness of Mr. Slattery [sic] financial assistance. [Debtor] has explored with several lenders the idea of using one of the company aircraft as security for a replacement LC." Opposition, Exhibit 6.
- On July 11, 2014, Mr. Moller emails Mr. Slattery. This is the only email that contains the word "guarantee." Specifically, Mr. Moller states: "We appreciate the help you were so kind to render by issuing the rent guarantee to LAWA." Mr. Moller then details his plan to cancel Mr. Slattery's "\$141 K Standby Letter of Credit." Mr. Moller also wrote that Mr. Slattery

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 15, 2018

Hearing Room 301

2:00 PM

CONT...

**BaseNet, LLC**

**Chapter 7**

"stated [he] will notify LAWA in August that [his] LC will not be renewed when it expires in 90 days. [Mr. Slattery] informed [Mr. Moller] that [he] want[s] a cancellation of [his] LC right away, but no later than 90 days." Opposition, Exhibit 7.

- On July 11, 2014, in response to this prior email, Mr. Slattery responded to Mr. Moller, asking: "If none of the above happens, then what?" Opposition, Exhibit 7.
- On September 21, 2014, Mr. Moller emailed Mr. Slattery, asking him to "not accept information received from third parties about the status of [Debtor] as it relates to [Mr. Slattery's] Letter of Credit with LAWA." Mr. Moller also stated: "I have not told you or anyone else that we wanted you to extend the LC beyond the November termination date. You may recall our phone conversation, where I specifically suggested for you not to renew and extend the LC, which you had so kindly offered. I did respond YES, to a question from Brian Cochran in our office on Thursday 'is Jim Slattery's LC exposed.' [Debtor] is behind one month in its rent payment to LAWA. This is partly due to a Sales Tax overpayment of \$40,000." Opposition, Exhibit 8.

Opposition, Exhibit 1, 5-8. In the Opposition, ARH asserts that the emails and deposition testimony by Mr. Moller establish a guaranty agreement between ARH and Debtor, and that a written guaranty agreement is not required under California law. On October 26, 2017, the Trustee filed a reply to the Opposition [doc. 202] and evidentiary objections to the declarations in support of the Opposition [docs. 203, 204].

## II. ANALYSIS

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Two statutes provide that surety agreements must be in writing. Pursuant to California Civil Code ("CCC") § 1624(a),

The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

...

(2) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

CCC § 2793 repeats the writing requirement found in CCC § 1624(a), and adds additional requirements regarding surety agreements. Pursuant to CCC § 2793, "[e]xcept as prescribed by the next section, a suretyship obligation must be in writing, and signed by the surety; but the writing need not express a consideration." CCC § 2794, in turn, provides a list of exceptions to CCC § 2793 not applicable to this case.

Here, ARH acknowledges that ARH's suretyship obligation is not in writing. As such, to enforce the alleged "informal" agreement between ARH and Debtor regarding the repayment by Debtor of the funds transferred to LAWA, ARH must provide the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

Court with authority that excepts the alleged agreement from the confines of CCC §§ 1624(a) and 2793.

ARH cites only to CCC § 2847, which provides for reimbursement of a surety by the principal:

If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

Although ARH does not expressly state this, ARH appears to assert that CCC § 2847 is an exception to CCC § 2793. In the Opposition, ARH asserts: "No writing is required, and the principal is bound to reimburse the surety. *Civil Code* § 2847." This assertion, combined with a citation to CCC § 2847, is misleading. As is evident from the language of the statute, CCC § 2847 does not include any language stating that satisfying the principal obligation excepts the agreement from the requirement that it be in writing.

ARH also cites to *Berrington v. Williams*, 244 Cal.App.2d 130 (Ct. App. 1966), in support of his proposition that the agreement need not be in writing. However, *Berrington* is inapplicable to the facts of this case. In *Berrington*, the defendant executed a promissory note to a bank. *Berrington*, 244 Cal.App.2d at 132. The defendant's brother signed the written promissory note as guarantor. *Id.* Thereafter, the defendant defaulted and the guarantor paid the bank the amount owed by the defendant. *Id.* Subsequently, the guarantor assigned his rights under the guaranty agreement to the plaintiff. *Id.*

The parties disputed from which funds the defendant was to reimburse the plaintiff. *Id.*, at 132-33. The defendant asserted that, in a series of previous notes culminating in the final promissory notes, the parties had agreed that the guarantor would be reimbursed from the sale of three lots. *Id.*, at 132. The original guarantor testified that he never agreed to obtain reimbursement solely from the sale of these lots, and that the guarantor believed that the defendant would pay the plaintiff "on his general

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 15, 2018

Hearing Room 301

2:00 PM

CONT... BaseNet, LLC

Chapter 7

credit" in the event the guarantor paid off the debt to the bank. *Id.*, at 133.

In assessing the facts, the *Berrington* court first found that the guarantor's payment of the debt under the promissory note extinguished the debt, and the guarantor's remedies were not based on the original obligation. *Id.*, at 134-35. Specifically, the court found that the "plaintiff's suit is on the implied agreement of defendant to reimburse, not upon the promissory note which was extinguished by the guarantor's payment." *Id.*, at 135. The court further held that, unless the parties to a guaranty agreement explicitly agree on different terms, a general right to reimbursement controls. *Id.* The court then held that an agreement *about the source of reimbursement* need not be in writing. *Id.* The court *never* held that the guaranty agreement itself need not be in writing.

Here, the parties appear to acknowledge that there is no written guaranty agreement between the parties. As such, neither CCC § 2847 nor *Berrington* helps ARH's case.

ARH also attaches a string of emails and deposition testimony (from a state court case) by Mr. Moller to the Opposition in support of its claim. ARH asserts that, through these documents, Debtor subsequently confirmed the guaranty agreement, making the alleged guaranty agreement enforceable despite CCC § 2793. ARH provides no authority for the assertion that a subsequent affirmance of an oral guaranty brings the agreement outside the reach of the Statute of Frauds. Further, neither the emails nor the portions of the deposition provided to the Court include language by Mr. Moller that can be construed as confirming the existence of a guaranty agreement between the parties. At best, the emails and the deposition testimony refer to a letter of credit (without any identifying information as to *which* letter of credit) and discuss replacement or cancellation of the letter of credit. In other words, the emails do not establish the creation or existence of a guaranty agreement; rather, they discuss conditions triggering the replacement or cancellation of a letter of credit.

To the extent ARH is attempting to argue that the emails constitute a "memorandum" in writing sufficient to satisfy the Statute of Frauds, the emails do not include enough material terms to serve this purpose. Pursuant to CCC § 1624(a) and (b) and authorities interpreting the same, emails between parties may be sufficient as "note[s] or memorand[a]... in writing." CCC § 1624(a); *see Piveg, Inc. v. Gen. Star Indem.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**BaseNet, LLC**

**Chapter 7**

*Co.*, 193 F.Supp.3d 1138, 1146 (S.D. Cal. 2016) ("[U]nder California law, several emails may collectively constitute a memorandum that satisfies the statute of frauds.") (internal quotations and citations omitted).

"The statute of frauds does not require a written contract; a 'note or memorandum... subscribed by the party to be charged' is adequate." *Sterling v. Taylor*, 40 Cal.4th 757, 765 (2007). "A written memorandum is not identical with a written contract; it is merely evidence of it and usually does not contain all of the terms." *Crowley v. Modern Faucet Mfg. Co.*, 44 Cal.2d 321, 323 (1955). "[I]n most instances, it is not even necessary that the parties intended the memorandum to serve a contractual purpose." *Sterling*, 40 Cal.4th at 766.

"A memorandum satisfies the statute of frauds if it identifies the subject of the parties' agreement, shows that they made a contract, and states the essential contract terms with reasonable certainty." *Id.* "Only the essential terms must be stated, details or particulars need not be. What is essential depends on the agreement and its context and also on the subsequent conduct of the parties." *Id.* (internal quotations and citations omitted).

"Because the memorandum itself must include the essential contractual terms, it is clear that extrinsic evidence cannot *supply* those requirements. It can, however, be used to *explain* essential terms that were understood by the parties but would otherwise be unintelligible to others." *Id.*, at 767 (emphases in original).

Here, it is unclear if ARH has attached the entirety of the parties' email correspondence with each other. The email exhibits attached to the Opposition appear to be only part of the email chain between the parties. As it stands, the selected emails provided to the Court do not satisfy the Statute of Frauds, in that the essential terms of the alleged surety agreement are not included in the emails. Crucially, there is no statement by Mr. Slattery (or his representatives) acknowledging a surety agreement.

This is the relevant language provided to the Court:

- Prior to the issuance of the LOC, Mr. Moller writes Mr. Slattery informing him that he's attached the "Los Angeles World Airport Letter regarding the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**BaseNet, LLC**

**Chapter 7**

Standby Letter of Credit." Mr. Moller also states that he and Mr. Hoover are "very very [sic] thankful." Opposition, Exhibit 1.

- After the issuance of the LOC, Mr. Moller writes Ms. Smith, who works with Mr. Slattery, giving her an "update on the lease renewal efforts that [Debtor] has going with LAWA." In this email, Mr. Moller states that "[i]f [Debtor] is not selected by LAWA to be qualified to bid, the LC will be returned. If [Debtor] does qualify, [Debtor] will substitute the standby LC. As you can see, in either instance the Standby LC will be returned to Mr. Slattery shortly." Opposition, Exhibit 5.
- On May 7, 2014, also after the issuance of the LOC, Mr. Moller again emails Ms. Smith to update her on the lease with LAWA. In relevant part, Mr. Moller states that "[t]he Letter of Credit (LC) is in place to secure against a possible failure to pay LAWA rent for 3 months.... Since the LC was placed as security, [Debtor] has always paid the rent to LAWA in the month due and is current with the rent. We very much appreciate the kindness of Mr. Slattery [sic] financial assistance. [Debtor] has explored with several lenders the idea of using one of the company aircraft as security for a replacement LC." Opposition, Exhibit 6.
- On July 11, 2014, Mr. Moller emails Mr. Slattery. This is the only email that contains the word "guarantee." Specifically, Mr. Moller states: "We appreciate the help you were so kind to render by issuing the rent guarantee to LAWA." Mr. Moller then details his plan to cancel Mr. Slattery's "\$141 K Standby Letter of Credit." Mr. Moller also wrote that Mr. Slattery "stated [he] will notify LAWA in August that [his] LC will not be renewed when it expires in 90 days. [Mr. Slattery] informed [Mr. Moller] that [he] want[s] a cancellation of [his] LC right away, but no later than 90 days." Opposition, Exhibit 7.
- On July 11, 2014, in response to this prior email, Mr. Slattery responded to Mr. Moller, asking: "If none of the above happens, then what?" Opposition, Exhibit 7.
- Finally, on September 21, 2014, Mr. Moller emailed Mr. Slattery, asking

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

CONT...

**BaseNet, LLC**

**Chapter 7**

him to "not accept information received from third parties about the status of [Debtor] as it relates to [Mr. Slattery's] Letter of Credit with LAWA." Mr. Moller also stated: "I have not told you or anyone else that we wanted you to extend the LC beyond the November termination date. You may recall our phone conversation, where I specifically suggested for you not to renew and extend the LC, which you had so kindly offered. I did respond YES, to a question from Brian Cochran in our office on Thursday 'is Jim Slattery's LC exposed.' [Debtor] is behind one month in its rent payment to LAWA. This is partly due to a Sales Tax overpayment of \$40,000." Opposition, Exhibit 8.

As a preliminary matter, none of the emails mention ARH. The emails only mention Mr. Slattery. The emails also raise several questions. First, there is no mention of a guaranty except for Mr. Moller's statement that Mr. Slattery "issu[ed] the rent guarantee to LAWA." Opposition, Exhibit 7. This language does not confirm that Mr. Slattery and/or ARH guaranteed the LOC. Instead, Mr. Moller generally states that Mr. Slattery is guaranteeing the *rent*.

This is important because there are several ways for a party to guaranty rent payments other than by entering into guaranty agreements. One such method is by issuing a letter of credit, which has a similar function to a guaranty but is treated differently under California law. Pursuant to CCC § 2787, "[a] letter of credit is not a form of suretyship obligation." In the emails, the parties keep referring to the document as a "LC" or "letter of credit" instead of a guaranty. As such, the emails themselves do not establish the existence of a guaranty agreement in such a way as to satisfy the Statute of Frauds.

In addition, the Court is only able to glean few of the terms of the alleged guaranty agreement. For one, the emails indicate that the amount provided by Mr. Slattery was \$141,000. Opposition, Exhibit 7. This does not match the amount in the LOC. The only other fact the Court may infer from the emails is that LAWA was a beneficiary to a letter of credit. There is nothing about interest or repayment of draw fees. There is also no language conclusively establishing that Mr. Slattery and/or ARH entered into an agreement to guarantee the LOC. Nothing in the emails specifies the underlying obligation which is being guaranteed, other than vague references to LAWA and a bidding process. Consequently, the emails are insufficient as a "note or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

memorandum" in satisfaction of CCC § 1624(a).

Moreover, even if the emails could be read to establish a guaranty agreement, none of the pertinent emails are signed by Mr. Slattery or another representative of ARH. Neither Mr. Slattery nor his representatives sign off on any of the emails containing actual terms of an agreement. All of the relevant language is written and signed by Mr. Moller. The emails by Mr. Slattery cannot be read to incorporate Mr. Moller's terms or accept them. As such, even if Mr. Moller's statement of the terms was sufficient to count as a memorandum satisfying the Statute of Frauds, the emails are not "signed by the surety" as required by CCC § 2793. Consequently, Court will disallow ARH's claim against the estate.

### **III. CONCLUSION**

The Court will sustain the Objection.

The Trustee must submit an order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Trustee's Evidentiary Objections to the Declaration of Joan E. Cochran

paras. 5-6, 8: sustain

para. 9: overrule

Trustee's Evidentiary Objections to the Declaration of James Slattery

paras. 1, 7-11, 14, 16-19, 21, 24, 27: overrule

paras. 3-4, 6, 13, 20, 25, 28-29: sustain

para. 5: sustain as to "Either Finn Moller or Robert Hoover explained that the earlier letter of credit had been arranged by Pentastar, which was at one time the majority owner of Basenet. Pentastar was due to release or otherwise remove itself from Basenet as of December of 2013, and was unwilling to guarantee a new letter of credit for operation of an FBO with which it would not be involved going forward;" overrule as to the rest

para. 26: sustain as to "During discovery in my lawsuit against Mr. Moller, my

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 15, 2018**

**Hearing Room 301**

2:00 PM

**CONT... BaseNet, LLC**

**Chapter 7**

attorneys found an email which Mr. Moller apparently intended to send to me, but never did, confirming our conversation;" overrule as to the rest

para. 30: sustain as to statements made by Robert Hoover; overrule as to statements made by Finn Moller, who is listed as Debtor's principal in the petition and was speaking on behalf of Debtor (as shown in the emails), and whose statements count as a party admission (Mr. Hoover's involvement with Debtor has not been established through the record or the filings with this Court)

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

**Debtor(s):**

BaseNet, LLC

Represented By  
John D Faucher  
Edward P Kerns

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12886 Elizabeth E. Molina**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and American Honda Finance Corporation

Docket 10

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

**Debtor(s):**

Elizabeth E. Molina

Represented By  
R Grace Rodriguez

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13202 Deborah M. Blohm**

**Chapter 7**

**#2.00** Reaffirmation agreement between debtor and Cab West, LLC  
(2017 Ford Edge)

Docket 12

**Party Information**

**Debtor(s):**

Deborah M. Blohm

Represented By  
Michael Jay Berger

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13330 David Gershon and Naomi Gershon**

**Chapter 7**

**#3.00** Reaffirmation agreement between debtor and Daimler Trust  
re:2016 Mercedes-Benz E350W

Docket 15

**Party Information**

**Debtor(s):**

David Gershon

Represented By  
David S Hagen

**Joint Debtor(s):**

Naomi Gershon

Represented By  
David S Hagen

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, February 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13330 David Gershon and Naomi Gershon**

**Chapter 7**

**#4.00 Reaffirmation Agreement between debtor and Daimler Trust  
re: 2016 Mercedes-Benz C300W**

Docket 16

**Party Information**

**Debtor(s):**

David Gershon

Represented By  
David S Hagen

**Joint Debtor(s):**

Naomi Gershon

Represented By  
David S Hagen

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras

Chapter 13

#1.00 Motion for relief from stay [RP]

US BANK N.A.  
VS  
DEBTOR

fr. 8/9/17, 10/18/17; 11/22/17; 12/20/17; 1/24/18

Docket 85

**Tentative Ruling:**

At the prior hearing, the Court continued the hearing to February 21, 2018. The debtors were instructed to file a proposed adequate protection order (the "Proposed APO") and a motion to modify their chapter 13 plan (the "Proposed Motion to Modify") by February 7, 2018. Movant was instructed to file a response by February 14, 2018. On February 7, 2018, the debtors filed the Proposed APO and Proposed Motion to Modify [doc. 100. Exhs. A, B]. As of February 20, 2018, movant has not filed its response.

The Court will enter the Proposed APO, modified to reflect that the motion for relief from stay was "opposed," rather than "settled by stipulation."

**Party Information**

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Movant(s):**

US Bank National Association, As

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras  
Dane W Exnowski**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10126 Angela Cordero Britton**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

U.S. ROF III LEGAL TITLE TRUST 2015-1  
VS  
DEBTOR

fr. 1/10/18

Docket 55

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation to continue  
hearing entered 2/20/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Angela Cordero Britton

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTORS

Docket 100

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:17-13388 Nejdeh Nick Tambrazians and Janet Azhand

Chapter 7

#4.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTORS

Docket 25

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Nejdeh Nick Tambrazians

Represented By  
Jasmine Firooz

**Joint Debtor(s):**

Janet Azhand

Represented By  
Jasmine Firooz

**Movant(s):**

Toyota Motor Credit Corporation,

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Nejdeh Nick Tambrazians and Janet Azhand  
Austin P Nagel**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:17-10747 Alvin Isidro

Chapter 13

#5.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

Docket 33

\*\*\* VACATED \*\*\* REASON: Withdrawal of document filed 2/14/18.  
[Doc35]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Alvin Isidro

Represented By  
Robert M Aronson

**Movant(s):**

BMW Bank of North America

Represented By  
Zann R Welch  
Bret D. Allen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10774 Michel A. Contreras, IV and Carmen Contreras**

**Chapter 13**

**#6.00 Motion for relief from stay [RP]**

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 79

**\*\*\* VACATED \*\*\* REASON: Voluntary Dismissal of Motion Filed 2/6/18.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Michel A. Contreras IV

Represented By  
Rene Lopez De Arenosa Jr

**Joint Debtor(s):**

Carmen Contreras

Represented By  
Rene Lopez De Arenosa Jr

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11681 Carlos Mauricio Campos**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

NATIONS DIRECT MORTGAGE LLC  
VS  
DEBTOR

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Carlos Mauricio Campos

Represented By  
Elena Steers

**Movant(s):**

Nations Direct Mortgage, LLC

Represented By  
Mark S Krause

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:17-11136 Capri Coast Capital, Inc. and Ravello Ventures Inc.

Chapter 11

#8.00 Motion for relief from stay [AN]

JANE DOE  
VS  
DEBTOR

Docket 199

**Tentative Ruling:**

Deny. Movant has not shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the debtor. Notwithstanding the foregoing, movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 in the debtor's bankruptcy case.

The debtor must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Lewis R Landau

**Joint Debtor(s):**

Ravello Ventures Inc.

Represented By  
Lewis R Landau

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

Hampton Heights Inc

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

9:30 AM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#9.00 Motion for relief from stay [AN]

MEHRDAD (MAX) VAFI  
VS  
DEBTOR

Docket 93

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant may proceed under applicable nonbankruptcy law to proceed to final judgment in the nonbankruptcy forum, and the parties will have relief to prosecute any appeal of an entered judgment, provided that the stay remains in effect with respect to enforcement of any judgment against the debtor or property of the debtor's bankruptcy estate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Movant(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

1:30 PM

**1:15-11434 YKA Industries Inc a California Corporation**

**Chapter 7**

Adv#: 1:17-01039 GOLDMAN v. Krayndler et al

**#10.00** Pre-trial Conference re: Complaint for avoidance of fraudulent transfers pursuant to 11 U.S.C. sec 548 and 544, and California uniform fraudulent transfer Act 3439.04 and 3439.05; avoidance of unauthorized transfer of property of the estate pursuant to 11 U.S.C. sec 549; and recovery of property of the estate pursuant to 11 U.S.C. sec 550

fr. 6/21/17; 11/15/17; 1/24/18

Notice of settlement filed 11/2/17

Docket 1

**Tentative Ruling:**

What is the status of the parties' settlement, as referenced in the *Notice of Settlement* filed on November 2, 2017 [doc. 13]?

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

**Debtor(s):**

YKA Industries Inc a California

Represented By  
G Bryan Brannan

**Defendant(s):**

Andrew Krayndler

Pro Se

Erika Krayndler

Pro Se

LNA Builders

Pro Se

**Plaintiff(s):**

AMY L GOLDMAN

Represented By  
Annie Verdries



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... YKA Industries Inc a California Corporation**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Doah Kim  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

1:30 PM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

Adv#: 1:17-01093 Zamora v. Yoon

**#11.00** Status conference re complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip to continue entered 1/19/18. Hearing continued to 4/4/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10030 Maria Minicucci Miller**

**Chapter 7**

Adv#: 1:17-01031 Isromorphism Holdings, LLC v. Miller

**#12.00** Motion to vacate default judgment

Docket 24

**Tentative Ruling:**

**I. Background**

On January 5, 2017, the debtor filed her chapter 7 bankruptcy petition. The debtor filed the petition on the eve of trial in a state court lawsuit dealing with fraud and breach of contract related to the debtor's joint business venture with the plaintiff.

On April 4, 2017, the plaintiff initiated the instant adversary proceeding by filing an adversary complaint under 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6) (the "Complaint"). The Court sent electronic notice of the Complaint to the debtor's counsel for her bankruptcy case, Alon Darvish. On April 5, 2017, the Court issued a summons (doc. 4, the "Summons"), and sent notice of the Summons to the debtor at 3822 Sunshine Ct., Studio City, CA 91604 (the "Sunshine Ct. Address") via BNC. This is the address of record for the debtor in her main bankruptcy case.

The Summons states that the deadline for the debtor to file an answer or responsive pleading was May 5, 2017. The debtor did not file a response by that deadline. On May 24, 2017, the plaintiff filed a Unilateral Status Report (doc. 6), detailing that on April 5, 2017, the plaintiff's counsel mailed copies of the Summons, Notice of Status Conference and Complaint to the debtor at the Sunshine Ct. Address.

On June 2, 2017, the plaintiff filed a proof of service document (doc. 7), signed on June 2, indicating that the plaintiff served the debtor with a copy of the Summons and Complaint on April 5, 2017 (the "June Proof of Service"). Also on June 2, 2017, the plaintiff filed a request for entry of default (doc. 8), which was served on the debtor at the Sunshine Ct. Address. On June 6, 2017, the Clerk of the Court entered default (doc. 9), which the Court also served on the debtor at the Sunshine Ct. Address via BNC (doc. 10).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

On July 26, 2017, the plaintiff filed a motion for default judgment (doc. 11) and served it on the debtor at the Sunshine Ct. Address. The debtor did not file an opposition to the motion for default judgment. On August 25, 2017, the Court entered an order for default judgment (doc. 14), which the Court served on the debtor at the Sunshine Ct. Address via BNC (doc. 15). On October 6, 2017, the Court closed the adversary proceeding.

From October 16-18, 2017, the California state court held a trial regarding the debtor's dispute with the plaintiff. Both the debtor and her son are parties to that litigation. The debtor/defendant was present. However, as a result of the default judgment, the plaintiff was precluded from trying the case against the debtor.

On October 18, 2017, the debtor filed a motion to reopen the adversary proceeding (doc. 19). On November 8, 2017, the Court reopened the case (doc 22). On November 13, 2017, the debtor filed her Motion to vacate the default judgment (doc. 24, the "Motion"). The Motion includes a declaration by the debtor, stating that she had been in Canada for health and financial reasons since June 2015. In June 2017, the debtor had surgery, and her doctor advised her not to travel for a period of three months thereafter (doc. 24, p. 9). In addition, the debtor explains that she "became aware" that there "may have been an objection" to her bankruptcy discharge, but she only received the documents associated with the default judgment, even though her son lived at the Sunshine Ct. Address at all relevant times. She states that she "mistakenly believed that [she] could address any issues regarding an objection to [her] bankruptcy discharge from plaintiff by communicating with the Bankruptcy Court and/or the Chapter 7 Trustee" (doc. 24, p. 9). The debtor's declaration also includes facts tending to support her defense in this adversary proceeding, including that she contributed her own money for reasonable and necessary business supplies, and that the plaintiff was in charge of the accounting for their joint business venture (doc. 24, pp. 9-10).

On December 11, 2017, the plaintiff filed its opposition to the Motion (doc. 25, the "Opposition").

## **II. Discussion**

### **A. Service**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

Federal Rule of Bankruptcy Procedure 7004(b)(1) states:

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service 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.

Fed. R. Bankr. P. 7004(b)(1).

Federal Rule of Bankruptcy Procedure 7004(b)(9) states in relevant part:

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

Fed. R. Bankr. P. 7004(b)(9).

Federal Rule of Bankruptcy Procedure 7004(g) states:

(g) Service on Debtor's Attorney. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P.

Fed. R. Bankr. P. 7004(g).

In the Ninth Circuit, "whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry may have led." *In re Gregory*, 705 F.2d 1118, 1123 (9th Cir.1983). In *In re DeVore*, the Ninth Circuit Bankruptcy Appellate Panel held that mailing a notice by first class mail to a party's last known address is sufficient to satisfy due process. *In re DeVore*, 223

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

B.R. 193, 196 (B.A.P. 9th Cir. 1998). In *DeVore*, a debtor relocated from her address of record during her bankruptcy case, yet did not change her address of record until three years later. The trustee served a motion to reopen the case on the debtor's address of record. Despite the debtor's relocation from that address, the Bankruptcy Appellate Panel held that the debtor was on notice of the motion to reopen the case. Similarly, in *In re Vincze*, 230 F.3d 297, 298 (7th Cir. 2000), the Seventh Circuit Court of Appeals held that a debtor was properly served with an adversary summons and complaint by mail at the address listed on the petition, although the debtor was out of the country and did not actually receive the documents. The Court of Appeals held that the Federal Rules of Bankruptcy Procedure do not require that the recipients of a complaint and summons actually receive the mailed documents.

In the Motion, the debtor argues that the Court should vacate the default judgment because she was not properly served. However, the docket in this case bears multiple signed declarations attesting to service of the Summons and Complaint on the debtor at the Sunshine Ct. Address, the last address she provided to the Court, including the unilateral status report (doc. 6) and the signed proof of service (doc. 7). Mailing a copy of the summons and complaint to the address the debtor listed on her petition constitutes adequate service. Fed. R. Civ. P. 7004.

Fed. R. Civ. P. 7004 indicates that if the debtor is represented by counsel, then the plaintiff also must serve that counsel with a copy of the Summons and Complaint. Here, the debtor's attorney for her bankruptcy case, Alon Darwish, is not her attorney for this adversary proceeding, and when the Summons and Complaint were served, the debtor was not yet represented by an attorney in this adversary proceeding. Nonetheless, Mr. Darwish was given notice of the Complaint via NEF. In accordance with the ruling in *Gregory*, that notice was sufficient.

**B. Rule 60(b)**

Federal Rule of Civil Procedure ("Rule") 60(b), applicable pursuant to Federal Rule of Bankruptcy Procedure 9024, provides that "[o]n motion and just terms, the court may relieve a party its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect."

In bankruptcy litigation, default judgments may be set aside in accordance with Rule

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT... **Maria Minicucci Miller**

Chapter 7

60(b). Although courts generally have broad discretion when ruling on 60(b) motions, the Ninth Circuit Court of Appeals has noted that Rule 60(b) is remedial in nature and should be liberally applied. Default judgments are generally disfavored. "[W]henver it is reasonably possible, cases should be decided upon their merits." *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.1985). As between competing interests of promoting finality for judgments and of resolving cases on their merits, "the finality interest should give way fairly readily." *In re Peralta*, 317 B.R. 381, 388 (9th Cir. B.A.P. 2004).

Courts in the Ninth Circuit use a three-factor analysis in considering whether to vacate a default judgment which is not procedurally defective: "(1) whether the defendant's culpable conduct led to the default; (2) whether the defendant has a meritorious defense; and (3) whether reopening the default judgment would prejudice the plaintiff." *Peralta*, 317 B.R. at 385; *see also TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir.2001) and *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.1984). The party seeking the relief from the default judgment bears the burden of demonstrating that the three factors weigh in favor of relief. *Peralta*, 317 B.E. at 388.

Here, the debtor has the burden of proof to demonstrate that the *Peralta* factors weigh in favor of vacating the dismissal. Given this circuit's prevailing policy in favor of resolving cases on their merits, and given the debtor's assertions in the Motion, this Court is persuaded that the factors justify relief from the default judgment.

Culpability: Courts in the Ninth Circuit have construed the "culpable conduct" factor as consistent with the Supreme Court's test for "excusable neglect" set forth in the *Pioneer* case. *Peralta* 317 B.R. at 388. In *Pioneer*, the Supreme Court considered "prejudice to the [opponent], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was in the reasonable control of the movant, and whether the movant acted in good faith" in assessing whether to grant relief. *Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395 (1993).

For the purpose of the factors, a defendant's conduct is culpable where there is "no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond. *TCI Group Life Ins. Plan*, 244 F.3d at 698. Here, the debtor's situation is analogous to a number of cases in which the Ninth Circuit Court of Appeals held that the party moving for relief was acting in good faith. For example, in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

*Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000), an attorney left the United States for a family emergency, missing the deadline to answer a motion for summary judgment, and did not contact the district court or opposing counsel until over two weeks after his return. The Court of Appeals held that the reasons for the delay were not the result of "deviousness or willfulness," and did not indicate anything less than good faith. Similarly, in *Falk*, the Ninth Circuit Court of Appeals vacated a default judgment although the defendant did not move to set aside the judgment for five months; the defendant failed to appear at the hearing because she was leaving the country for medical treatment the following day, she did not return to the United States until two months after the judgment, and she had difficulty obtaining legal assistance. *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.1984). The Court of Appeals held that the defendant's knowing failure to answer was for understandable reasons and not designed to obtain strategic advantage in the litigation. *See TCI Group Life Ins. Plan*, 244 F.3d at 698.

Here, the debtor's actions have caused some prejudice to the plaintiff, in that the plaintiff already has spent resources pursuing the default judgment. In addition, the debtor has caused delay in the prosecution of the plaintiff's claim, first with her bankruptcy filing and now with her delayed response to the adversary complaint. However, pursuing a default judgment is not as costly as pursuing a judgment on the merits, so vacating the default judgment would not effectively force the plaintiff to try the case a second time. In addition, the debtor will be significantly more prejudiced by a judgment against her on which she did not present a defense.

Although the plaintiff has experienced a delay in prosecuting this case, the debtor's declaration attached to the Motion reflects that at least some of the delay may have been beyond the debtor's control. At the time the plaintiff filed the Complaint, the debtor was in Canada addressing her medical issues. The debtor had surgery in June, after which her doctor instructed her not to travel for a period of three months.

The debtor purports to have acted in good faith. In her declaration, she states that she never received the complaint that was mailed to the Sunshine Ct. Address, and when she did become aware of an objection to her bankruptcy discharge, she "mistakenly believed" that she could "address any issues regarding [the] objection" by communicating with the Bankruptcy Court or Chapter 7 Trustee. (doc. 24, p. 9). In light of the debtor's medical issues, as well as her statement that she was out of the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT... **Maria Minicucci Miller**

**Chapter 7**

country and was not at home to receive notices mailed to her, it does not appear her conduct was in bad faith.

On balance, this Court's analysis of the *Pioneer* factors and its comparison with other cases in the Ninth Circuit indicate that the debtor's conduct amounted to excusable neglect and did not rise to the level of culpability.

Meritorious Defense: To make a showing of a meritorious defense, a defendant must present "specific facts that would constitute a defense" or substantially alter the liability at stake. *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1094 (9th Cir. 2010). General objections to or refutations of the allegations made in the complaint are not sufficient to satisfy the requirement. *Id.* The Court must determine whether there is "some possibility" that the outcome of the suit after a full trial would be different than the result due to the default. *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). The movant must "allege sufficient facts that, if true, would constitute a defense." *Mesle*, 615 F.3d at 1094.

The debtor has the burden of proof to present facts which constitute her defense. The debtor presented some facts in her declaration and attached a copy of her proposed answer to the Motion. The debtor's facts, including that she contributed her own money for reasonable and necessary business supplies, and that the plaintiff was in charge of the accounting for their joint business venture, taken as true, present a defense to the plaintiff's claims that the debtor appropriated business investment funds for her own use.

The debtor did not provide specific facts in defense against some of the plaintiff's other claims, including that the debtor provided the plaintiff with multiple fraudulent documents, as well as that she filed a series of fraudulent documents with the California Secretary of State. However, the relevant case law does not require that the debtor present a complete defense, only some possibility that the outcome of the suit after a full trial would be different than the result due to the default. The debtor has met her burden to present a meritorious defense.

Prejudice to Plaintiff: As discussed above, although the plaintiff has already experienced a delay in the resolution of its claims against the debtor, relief from the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maria Minicucci Miller**

**Chapter 7**

default judgment will not force the plaintiff to "relitigate" any matter, because neither this Court, nor the state court, has held trial on the merits of this matter. The prejudice to the plaintiff is outweighed by the prejudice to the debtor and the Ninth Circuit's prevailing preference for judgments on the merits of a case over default judgments.

**III. Conclusion**

In light of the foregoing, the Court will grant the Motion.

The debtor must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Maria Minicucci Miller

Represented By  
Alon Darvish

**Defendant(s):**

Maria Minicucci Miller

Represented By  
William J Smyth

**Plaintiff(s):**

Isromorphism Holdings, LLC

Represented By  
Talin V Yacoubian

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

**#13.00** Plaintiff's motion for summary judgment or,  
in the alternative, partial summary judgment

fr. 2/14/18

Docket 33

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

**A. *The First State Court Action***

On October 26, 2009, Tessie Cleveland Community Services Corp. ("Plaintiff") filed a state court action against Mohsen Loghmani entitled *Tessie Cleveland Community Services Corp. v. Loghmani, et al.*, Los Angeles Superior Court, Case No. TC023641 (the "First State Court Action"). (Complaint, ¶ 12; Plaintiff's Statement of Uncontroverted Facts and Conclusions of Law ("Statement"), ¶ 3.) In the First State Court Action, Plaintiff alleged claims including negligence, four counts of breach of contract, and intentional misrepresentation in connection with Mr. Loghmani's services as a general contractor and engineer in remodeling some of Plaintiff's corporate facilities. (Request for Judicial Notice ("RJN"), Exh. 1.)

On December 28, 2011, the jury returned a verdict in favor of Plaintiff. (Statement, ¶ 4.) In its special verdict form on Plaintiff's intentional misrepresentation claim, the jury found the following:

- Mr. Loghmani represented to Plaintiff that an important fact was true;
- Mr. Loghmani's representation was false;
- Mr. Loghmani knew that the representation was false when he made it,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

or made the representation recklessly and without regard for its truth;

- Mr. Loghmani intended that Plaintiff rely on the representation;
- Plaintiff reasonably relied on Mr. Loghmani's representation;
- Plaintiff was harmed;
- Plaintiff's reliance on Mr. Loghmani's representation was a substantial factor in causing it harm; and
- Plaintiff was damaged in the amount of \$242,695.25.

(Statement, ¶ 5; RJN, Exh. 1, p. 16–18.) The jury did not find by clear and convincing evidence that Mr. Loghmani "engaged in [his] conduct with malice, oppression, or fraud." (RJN, Exh. 1, at p. 18.)

On March 29, 2012, before judgment was entered in the First State Court Action, Mr. Loghmani filed a voluntary chapter 7 petition, commencing case no. 1:12-bk-12998-VK (the "Prior Bankruptcy Case"). On March 7, 2013, after Plaintiff obtained relief from the automatic stay in the Prior Bankruptcy Case, judgment was entered in the First State Court Action (the "First State Court Judgment"). (Statement, ¶ 6; RJN, Exh. 1.) On August 6, 2013, the state court entered an order granting to Plaintiff attorney's fees in the amount of \$1,458,101.25, pursuant to the contracts between Plaintiff and Mr. Loghmani, which permitted recovery of fees under contract and tort theories. (Statement, ¶ 7; RJN, Exh. 2.)

On July 23, 2013, Mr. Loghmani appealed the First State Court Judgment. (Complaint, ¶ 24.) On November 13, 2014, Mr. Loghmani's appeal was dismissed as untimely. (Statement, ¶ 8; RJN, Exh. 3; RJN, Exh. 4, p.2 n.1.)

On October 4, 2013, Mr. Loghmani appealed the attorney's fees award in the First State Court Action. On January 29, 2015, the attorney's fees award was affirmed on appeal. (Statement, ¶ 9; RJN, Exh. 4.)

***B. The Second State Court Action***

On October 28, 2011, Plaintiff filed an action in state court against Mohsen and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

Mahshid Loghmani (together, "Defendants"), entitled *Tessie Cleveland Community Services Corp. v. Loghmani, et al.*, Los Angeles Superior Court, Case No. EC05714 (the "Second State Court Action"). [FN1] (Statement, ¶ 10; RJN, Exh. 5.) The Second State Court Action concerned a fraudulent transfer of property from Mr. Loghmani to Mrs. Loghmani, including real property located at 8212 Laurel Canyon Blvd., North Hollywood, CA (the "Laurel Canyon Property"). (RJN, Exh. 5.) Plaintiff alleged that these transfers were effectuated in order to conceal Mr. Loghmani's assets from creditors, including Plaintiff. (RJN Exh. 5.)

On February 25, 2015, judgment was entered in favor of Plaintiff on its claims for intentional fraudulent transfer and constructive fraudulent transfer (the "Second State Court Judgment"). (Statement, ¶ 11; RJN, Exh. 6.) The state court also made special findings that

- Mr. Loghmani "transfer[ed] property to Mahshid Loghmani with the express agreement that Mohsen Loghmani would retain an equitable interest in the property";
- Mr. Loghmani "transfer[ed] to Mahshid Loghmani under circumstances showing that Mohsen Loghmani intended to retain an equitable interest in the same"; and
- Ms. Loghmani "conspire[d] with Mohsen Loghmani to purchase property in her name using the assets of Mohsen Loghmani for the purpose of protecting and concealing said assets from Mohsen Loghmani's creditors."

(Statement, ¶ 12; RJN, Exh. 6, at p. 3.) The Second State Court Judgment also stated that Plaintiff did not "prove by clear and convincing evidence that [Mr. Loghmani] is guilty of fraud, malice, and/or oppression[.]" because "[n]o evidence [was] presented." (RJN, Exh. 6, at p. 4.) The Second State Court Judgment is silent as to whether Ms. Loghmani was guilty of fraud, malice, and/or oppression.

In the Second State Court Judgment, the state court ordered as follows:

1. Judgment is hereby entered for Plaintiff Tessie Cleveland Community Services Corporation and against Defendant Mohsen Loghmani and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

Defendant Mahshid Loghmani.

2. The real property commonly known as 8212 Laurel Canyon Boulevard, North Hollywood, California 91605, Assessor's Parcel Number 2310-002-003, and further described as "Lot 3 of Tract No. 14270, in the City of Los Angeles. as per Map recorded in Book 359 Page(s) 33 and 34 of Maps, in the Office of the County Recorder of Los Angeles County, State of California" (hereinafter "8212 Laurel Canyon Boulevard, North Hollywood, California 91605") is subject to attachment and execution to satisfy the judgment in *Tessie Cleveland Community Services Corporation v. Loghmani*, Los Angeles Superior Court Case No. TC023641. The clerk shall issue a writ of attachment in accordance with this Judgment in the amount of \$1,869,389.87.
3. The transfer of Defendant Mohsen Loghmani's interest in 8212 Laurel Canyon Boulevard, North Hollywood, California 91605, reflected in the Quitclaim Deed recorded on October 9, 2008, in the Los Angeles County Registrar-Recorder's Office as Document No. 20081810213, is hereby set aside.
4. This Judgment is hereby declared to be a lien on 8212 Laurel Canyon Boulevard, North Hollywood, California 91605.
5. The judgment in *Tessie Cleveland Community Services Corporation v. Loghmani*, Los Angeles Superior Court Case No. TC023641, is hereby declared to be a lien on 8212 Laurel Canyon Boulevard, North Hollywood, California 91605, pursuant to the Abstract of Judgment recorded on August 7, 2014, in the Los Angeles County Registrar-Recorder's Office as Document No. 20140821148.

(RJN, Exh. 6, at pp. 5–6.)

On June 24, 2015, the state court awarded Plaintiff \$315,891.75 in attorney's fees against Defendants. (Statement, ¶ 13; RJN, Exh. 7.) On November 28, 2016, the Second State Court Judgment and attorney's fees award was affirmed on appeal. (Statement, ¶ 14; RJN, Exh. 8.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

Chapter 7

**C. *The Prior Bankruptcy Case and Prior Adversary Proceedings***

As noted above, on March 29, 2012, Mr. Loghmani filed the Prior Bankruptcy Case. At the time Mr. Loghmani filed the Prior Bankruptcy Case, both the First State Court Action and Second State Court Action (together, the "Prepetition State Court Actions") were pending. (Statement, ¶¶ 16, 17; RJN, Exh. 9.) Mr. Loghmani listed the Prepetition State Court Actions in his Statement of Financial Affairs ("SOFA"). (RJN, Exh. 10, p. 20.)

***Plaintiff's Prior Adversary Proceeding re: Denial of Discharge and Nondischargeability.*** On July 2, 2012, Plaintiff filed an adversary complaint against Mr. Loghmani, seeking denial of discharge under 11 U.S.C. §§ 727(a)(3) and (a)(4)(A), and nondischargeability of debt under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(4) ("Plaintiff's Prior Adversary Proceeding") [adv. no 1:12-ap-01223-VK, doc. 1]. On January 28, 2014, the Court entered an order dismissing Plaintiff's Prior Adversary Proceeding without prejudice [adv. no 1:12-ap-01223-VK, doc. 31].

***The UST Adversary Proceeding.*** On November 30, 2012, the United States Trustee ("UST") filed an adversary complaint against Mr. Loghmani, seeking denial of discharge pursuant to 11 U.S.C. §§ 727(a)(2)(A) and (a)(4)(A) (the "UST Adversary Proceeding"). After trial, on January 7, 2014, the Court entered its Findings of Fact and Conclusions of Law ("727 Findings") [adv. no. 1:12-ap-01419-VK, doc. 48]. On January 7, 2014, the Court also entered a judgment in favor of the UST and against Mr. Loghmani, denying Mr. Loghmani his discharge pursuant to §§ 727(a)(2)(A) and (a)(4)(A) (the "727 Judgment") [adv. no. 1:12-ap-01419-VK, doc. 47]. The Court found that, among other things, Mr. Loghmani had failed to disclose in his schedules the transfer of land in San Bernardino (the "San Bernardino Land") to his son, Ciavash Loghmani. In addition, the Court found

that the [San Bernardino transfer] was fraudulent, including that, *inter alia*, (i) "[a]fter the verdict [in the First State Court Action], and before judgment was entered against Mr. Loghmani, on February 2, 2011, the Loghmanis transferred the San Bernardino Land to their son, Ciavash Loghmani, by quit claim deed"; (ii) Mohsen Loghmani "testified that he valued the San Bernardino Land at \$10,000.00 at the time of the transfer, but did not receive any money from his son at the time of the transfer"; and (iii) Mohsen Loghmani "with the intent to hinder, delay,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

or defraud a creditor and/or the Trustee, transferred property of the debtor, specifically, the San Bernardino Land, within one year before the date of the filing of the petition in violation of 11 U.S.C. § 727(a)(2)(A).

(Statement, ¶ 25; RJN, Exh. 11, p. 2–3, ¶¶ 8–9, p. 6, ¶ 8.)

On January 21, 2014, Mr. Loghmani filed an appeal of the 727 Judgment with the Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") [adv. no. 1:12-ap-01419-VK, doc. 50]. On February 2, 2015, the BAP affirmed the 727 Judgment [adv. no. 1:12-ap-01419-VK, doc. 65].

On August 3, 2016, the Prior Bankruptcy Case was closed [case no. 1:12-bk-12998-VK, doc. 89].

***D. The Third State Court Action***

On September 23, 2014, Plaintiff filed an action in state court entitled *Tessie Cleveland Community Services Corp. v. Loghmani, et al.*, Los Angeles Superior Court, Case No. BC558489 (the "Third State Court Action"). Plaintiff alleged eight causes of action against multiple defendants, including Defendants and their children, Ciavash and Ciamack Loghmani. (Statement, ¶ 23; RJN, Exh. 14.) Plaintiff also alleged that on February 2, 2012, Defendants transferred property located in San Bernardino with an intent to hinder, delay, and defraud creditors (the "San Bernardino Transfer"). (Statement, ¶ 24; RJN, Exh. 14, ¶¶ 40–43.)

***E. Defendants' Pending Bankruptcy Case and the Pending Adversary Proceeding***

On August 1, 2016, Defendants filed a voluntary chapter 7 petition. On November 1, 2016, Plaintiff filed a complaint requesting nondischargeability of the debts owed to it pursuant to 11 U.S.C. §§ 523(a)(6) and (a)(10), and denial of discharge pursuant to 11 U.S.C. §§ 727(a)(2), (3), (4), and (5) (the "Complaint") [doc. 1].

On October 25, 2017, an order was entered granting Plaintiff's motion for leave to file a first amended complaint (the "FAC") [doc. 28]. The order provided that Defendants' answer to the FAC was due on or before November 15, 2017. On



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

October 27, 2017, Plaintiff filed the FAC, which contained an additional claim for relief under 11 U.S.C. § 523(a)(2)(A) [doc. 30]. On November 21, 2017, Defendants filed an untimely answer to the FAC [doc. 37].

On November 17, 2017, Plaintiff filed the Motion [doc. 33] and a Request for Judicial Notice ("RJN") in support of the Motion [doc. 34]. The hearing on the Motion was initially set for January 10, 2018. On January 5, 2018, orders were entered transferring the Defendants' bankruptcy case [case no. 1:16-bk-12214, doc. 49] and the pending adversary proceeding to this Court [doc. 38]. The hearing on the Motion was continued to February 14, 2018 [doc. 42]. As of February 12, 2018, Defendants have not timely filed a response to the Motion.

## **II. LEGAL STANDARDS**

### ***A. General Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248-50 (internal citations omitted). Additionally, issues of law are appropriate

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT... **Mahshid Loghmani**

**Chapter 7**

to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.* at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

Here, Defendants have not opposed the Motion and there are no genuine issues as to any material fact. As discussed below, Plaintiff is entitled to judgment as a matter of law pursuant to 11 U.S.C. § 523(a)(2)(A) based on the First State Court Judgment as to Mr. Loghmani. Plaintiff is also entitled to summary judgment as a matter of law pursuant to § 523(a)(10). Plaintiff is not entitled to summary judgment as a matter of law pursuant to § 523(a)(2)(A) based on the Second State Court Judgment or on the 727 Judgment, or pursuant to § 523(a)(6).

**B. Issue Preclusion**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment . . . . In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (9th Cir. B.A.P. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245).

**C. 11 U.S.C. 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

Chapter 7

conduct; and  
(5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (9th Cir. B.A.P. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

**D. 11 U.S.C. 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

**E. 11 U.S.C. § 523(a)(10)**

11 U.S.C. § 523(a)(10) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from a debt "that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title . . . in which the debtor waived discharge, or was denied a discharge under section 727(a)(2),

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT... **Mahshid Loghmani**

Chapter 7

(3), (4), (5), (6), or (7) of this title[.]"

A debtor's "failure to obtain a discharge in [a prior] bankruptcy case [generally] renders debts then existing nondischargeable in a subsequent case even though a discharge is obtained in the subsequent case." *In re Belmore*, 68 B.R. 889, 892 (Bankr. M.D. Pa. 1987). "A determination denying the debtor a discharge is, in effect, *res judicata*, with respect to the debts in existence." *Id.* Section 523(a)(10) "protect bankruptcy from itself, by preserving *denial* of discharge through successive bankruptcies. *Royal Am. Oil & Gas Co. v. Szafranski (In re Szafranski)*, 147 B.R. 976, 981 (Bankr. N.D. Okla. 1992) (emphasis in original).

"When section 523(a)(10) bars the discharge of debts that existed in an earlier case, it does so only when the discharge in the earlier case was denied due to dishonesty or uncooperativeness on the part of the debtor. The discharge exception of section 523(a)(10) therefore serves to prevent debtors from circumventing the deterrent effect of a discharge denial under section 727."

Alan N. Resnick and Henry J. Sommer, eds., 4 Collier on Bankruptcy, ¶ 523.16[2] (16th ed. 2017).

### III. DISCUSSION

#### A. Request for Judicial Notice

As an initial matter, pursuant to Federal Rule of Evidence 201(b)(2), the Court should grant Plaintiff's unopposed request for judicial notice of documents attached to its RJN. The judicially noticeable documents are copies of court records. *See, e.g., Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014) ("It is well established that we may take judicial notice of judicial proceedings in other courts."); *Golden Gate v. Marincovich*, 286 F. 105, 106 (9th Cir. 1923) ("Every court takes judicial notice of its own records in the same case.").

#### B. 11 U.S.C. § 523(a)(2)(A)

Plaintiff has met its burden of proving that it is entitled to summary judgment on its 11 U.S.C. § 523(a)(2)(A) claim based on the First State Court Judgment as to Mr.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

Loghmani. However, Plaintiff has not met its burden of proving that it is entitled to summary judgment on its § 523(a)(2)(A) claim based on the Second State Court Judgment or on the 727 Judgment.

***1. The First State Court Judgment***

***a. The Issues Are Identical to the Issues from the First State Court Action***

In the First State Court Judgment, the state court held that Mr. Loghmani was liable for fraud. The First State Court Judgment was based on the same facts alleged in the Complaint.

With respect to § 523(a)(2)(A), "Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing to *In re Younie*, 211 B.R. 367, 373–74 (9th Cir. B.A.P. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law.")). In light of these authorities, the issues from state court were identical to the issues here.

Here, aside from finding Mr. Loghmani liable for fraud, the state court also made specific findings as to each element of § 523(a)(2)(A). The First State Court Judgment adopted the jury's findings as to intentional misrepresentation by Mr. Loghmani as follows:

- Mr. Loghmani represented to Plaintiff that an important fact was true;
- Mr. Loghmani's representation was false;
- Mr. Loghmani knew that the representation was false when he made it, or made the representation recklessly and without regard for its truth;
- Mr. Loghmani intended that Plaintiff rely on the representation;
- Plaintiff reasonably relied on Mr. Loghmani's representation;
- Plaintiff was harmed;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

- Plaintiff's reliance on Mr. Loghmani's representation was a substantial factor in causing it harm; and
- Plaintiff was damaged in the amount of \$242,695.25.

(Statement, ¶ 5; RJN, Exh. 1, p. 16–18.)

The state court explicitly found that Mr. Loghmani made a false representation, that he knew his representations were false, and that he intended to deceive Plaintiff. The state court also found that Plaintiff "reasonably" relied on Mr. Loghmani representations. Section 523(a)(2)(A) requires only "justifiable" reliance, which is an intermediate level of reliance between actual reliance and reasonable reliance. *Field*, 516 U.S. at 72–73. Because the state court found that Plaintiff "reasonably" relied on Mr. Loghmani's statements, such a finding of reasonable reliance is sufficient to establish the lesser standard of "justifiable" reliance required under § 523(a)(2)(A). Finally, the state court found that Plaintiff's damages were proximately caused by Plaintiff's reliance on Mr. Loghmani's misrepresentations. Based on the foregoing, Plaintiff has met his burden of proving that the issues are identical.

***b. The Issues Were Actually Litigated in the First State Court Action***

The "actually litigated" requirement addresses whether the issues were "properly raised, submitted for determination, and determined in that proceeding." *Happy Nails & Spa of Fashion Valley, L.P. v. Su*, 159 Cal. Rptr. 3d 503, 512 (Ct. App. 2013). Based on the First State Court Judgment, the state court heard and considered evidence regarding the relevant issues and made its determination in light of that evidence. As such, this element is satisfied.

***c. The Issues Were Necessarily Decided in the First State Court Action***

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Ventures, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). Here, the state court could not have entered the First State Court Judgment holding that Mr. Loghmani is liable for fraud unless the state court decided all of the issues under § 523(a)(2)(A). This element is also

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT... Mahshid Loghmani  
satisfied.

Chapter 7

***d. The First State Court Judgment is Final and on the Merits***

The First State Court Judgment is final because it was entered on March 7, 2013. On November 13, 2014, Mr. Loghmani's appeal of the First State Court Judgment was dismissed as untimely. On January 29, 2015, the attorney's fees award in the First State Court Action was affirmed on appeal. The First State Court Judgment was also on the merits, as evidenced by the findings of the jury. (RJN, Exh. 1.) This element is satisfied.

***e. The Parties to this Proceeding are the Same as the Parties from the First State Court Action***

The parties to this proceeding are identical to the parties from the state court action. Plaintiff was the plaintiff in the First State Court Action, and Mr. Loghmani was one of the defendants in the First State Court Action. As such, this element is also satisfied.

**2. The Second State Court Judgment**

Plaintiff has not met its burden of proving that it is entitled to summary judgment on its § 523(a)(2)(A) claim based on the Second State Court Judgment.

In the Second State Court Judgment, the state court entered judgment against Defendants on its claims for intentional fraudulent transfer and constructive fraudulent transfer. Plaintiff argues that the Second State Court Judgment has preclusive effect as to its § 523(a)(2)(A) claim against Defendants.

In support of its position, Plaintiff relies on *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000), which holds that "actual fraud" need not be based on a misrepresentation, but could be based on a fraudulent transfer of property. In *McClellan*, a creditor sold his business assets to a debtor's brother for \$200,000. The creditor retained a security interest in the assets. The brother defaulted, owing the creditor more than \$100,000. The creditor sued the brother in state court, seeking an injunction against transferring



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

the assets. While the state court action was pending, the brother "sold" the machinery to his sister for \$10. The complaint alleged that the sister knew about the lawsuit and knew that she was colluding with her brother to thwart the creditor's collection of the debt. The sister then sold the machinery for \$160,000. The creditor added the sister as a defendant in the state court action, and the sister subsequently filed a chapter 7 petition. The creditor filed an adversary proceeding, seeking nondischargeability of the debt pursuant to § 523(a)(2)(A). The bankruptcy court dismissed the adversary proceeding on the grounds that the debt was dischargeable. *Id.* at 892. The Seventh Circuit Court of Appeals reversed, finding that the debt at issue was the debt owed by the sister to the creditor if she committed a fraud against him. If she was an active participant in the scheme against the creditor, the sister had committed actual fraud, and the resulting debt that arose was not dischargeable in her bankruptcy case. *Id.* at 895.

The Supreme Court has also held that "[t]he term 'actual fraud' in § 523(a)(2)(A) encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation." *Husky Int'l Elecs., Inc. v. Ritz*, — U.S. —, 136 S.Ct. 1581, 1586, 194 L.Ed.2d 655 (2016). In *Husky*, Husky International Electronics, Inc. ("Husky") sold products to Chrysalis Manufacturing Corp. ("Chrysalis"), and Chrysalis incurred a debt of \$163,99.38. Daniel Ritz was a director of Chrysalis. Between 2006 and 2007, Mr. Ritz drained Chrysalis of assets that it could have used to pay its creditors and transferred such monies to other entities he controlled. Husky sued Mr. Ritz to hold him personally responsible for the Chrysalis debt. Mr. Ritz filed a chapter 7 petition, and Husky filed an adversary proceeding against Mr. Ritz to hold the Chrysalis debt nondischargeable under § 523(a)(2)(A). Although the lower courts found the debt to be dischargeable because Mr. Ritz did not make an actual misrepresentation to Husky, the Supreme Court reversed. Under certain circumstances, a fraudulent transfer could give rise to a nondischargeability determination under § 523(a)(2)(A):

It is of course true that the transferor does not "obtai[n]" debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can "obtai[n]" assets "by" his or her participation in the fraud. See, e.g., *McClellan v. Cantrell*, 217 F.3d 890 (C.A.7 2000); see also *supra*, at 1587 – 1588. If that recipient later files for bankruptcy, any debts "traceable to" the fraudulent conveyance, see *Field*, 516 U.S., at 61, 116 S.Ct.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

437; *post*, at 1591, will be nondischarg[e]able under § 523(a)(2)(A). Thus, at least sometimes a debt "obtained by" a fraudulent conveyance scheme could be nondischargeable under § 523(a)(2)(A). Such circumstances may be rare because a person who receives fraudulently conveyed assets is not necessarily (or even likely to be) a debtor on the verge of bankruptcy, but they make clear that fraudulent conveyances are not wholly incompatible with the "obtained by" requirement.

*Husky*, 136 S. Ct. at 1589.

Plaintiff's reliance on *McClellan* is unavailing. In *McClellan*, the Seventh Circuit Court of Appeals reversed the bankruptcy court's dismissal of an adversary complaint. Although there was no misrepresentation, the facts of the fraudulent transfer at issue were sufficient to state a claim for actual fraud under § 523(a)(2)(A). In so holding, the Seventh Circuit Court of Appeals noted that § 523(a)(2)(A) was confined to actual fraud and excluded constructive fraud. *McClellan*, 217 F.3d at 894.

In *Hunt v. Spencer (In re Spencer)*, Case No. 16-02175-JMC-7, 2017 WL 745592 (Bankr. S.D. Ind. Feb. 24, 2017), the plaintiff argued that a state court judgment of conversion constituted "actual fraud" that would be nondischargeable under § 523(a)(2)(A). The plaintiff relied on *McClellan* and *Schroeder v. Busick (In re Busick)*, 264 B.R. 518 (Bankr. N.D. Ind. 2001) (granting summary judgment and holding that a state court's express finding of home improvement fraud had issue preclusive effect as to plaintiff's § 523(a)(2)(A) claim). The court denied the plaintiff's motion for summary judgment because, unlike the state court judgment in *Busick*, the state court judgment at issue made no express findings of fraud. *Spencer*, 2017 WL 745592, at \*2.

Here, as in *Spencer*, the Second State Court Judgment contains no express findings of "actual fraud" that could be construed as having issue preclusive effect as to Plaintiff's § 523(a)(2)(A) claim. The state court stated that Plaintiff did not "prove by clear and convincing evidence that [Mr. Loghmani] is guilty of fraud, malice, and/or oppression [.]" because "[n]o evidence [was] presented." (RJN, Exh. 6, at p. 4.) In addition, the state court was silent as to whether Ms. Loghmani was guilty of fraud, malice, and/or oppression. As such, *McClellan* is inapplicable to the Second State Court Judgment.

**3. The Third State Court Action and the UST Adversary**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

*Proceeding*

Chapter 7

Plaintiff has not met its burden of proving that it is entitled to summary judgment on its § 523(a)(2)(A) claim as to the transfer of the San Bernardino Land, based on the Third State Court Action and the 727 Judgment.

The Third State Court Action is still pending and Plaintiff has not introduced evidence of any order or ruling in the Third State Court Action regarding the San Bernardino Transfer. As such, Plaintiff has not established the preclusive effect of any issues decided in the Third State Court Action.

As for the issues decided in the UST Adversary Proceeding, such issues are not identical to the Plaintiff's claim under § 523(a)(2)(A). In the UST Adversary Proceeding, the Court found that Mr. Loghmani made the San Bernardino Transfer within one year of the petition date with the intent to hinder, delay, or defraud Plaintiff, and that Mr. Loghmani failed to disclose such transfer in his schedules. Such conduct warranted denial of Mr. Loghmani's discharge under §§ 727(a)(2)(A) and (a)(4). However, these issues addressed by those denial of discharge statutes are different from the issues arising under § 523(a)(2)(A), which concerns the nondischargeability of specific debts "obtained by . . . false pretenses, a false representation, or actual fraud."

**C. 11 U.S.C. § 523(a)(6)**

Plaintiff has not met its burden of proving that it is entitled to summary judgment on its claim under 11 U.S.C. § 523(a)(6) based on the State Court Actions and the 727 Judgment. [FN2]

Plaintiff argues that Mr. Loghmani's "tortious conduct" addressed in the First State Court Judgment is grounds for nondischargeability under § 523(a)(6) for "willful and malicious injury." A finding of fraud, by itself, is insufficient for purposes of § 523(a)(6). Although a finding of fraud requires a finding that a defendant possessed intent to deceive, it does not require a finding that a defendant's conduct was willful, as that term is defined above, or malicious. As such, the findings regarding fraud are not identical to the intent elements required for § 523(a)(6).

The First State Court Judgment is silent as to whether Mr. Loghmani's conduct was

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

"willful" or "malicious" as required under § 523(a)(6). The First State Court Judgment also stated that the jury did *not* find by clear and convincing evidence that Mr. Loghmani "engaged in [his] conduct with malice, oppression, or fraud." (RJN, Exh. 1, at p. 18.)

Similarly, the Second State Court Judgment is silent as to whether Defendants' conduct was "willful" or "malicious" as required under § 523(a)(6). The Second State Court Judgment also stated that Plaintiff did *not* "prove by clear and convincing evidence that [Mr. Loghmani] is guilty of fraud, malice, and/or oppression[.]" because "[n]o evidence [was] presented." (RJN, Exh. 6, at p. 4.) The Second State Court Judgment is silent as to whether Ms. Loghmani was guilty of fraud, malice, and/or oppression.

As for the Third State Court Action, there does not appear to be any evidence of any ruling or judgment yet from the state court. Accordingly, the Court cannot apply issue preclusion based on the Third State Court Action.

The 727 Judgment also does not contain the required findings as to "willful" or "malicious" conduct required under § 523(a)(6). The 727 Judgment stated that "Mr. Loghmani, with the intent to hinder, delay, or defraud a creditor and/or the Trustee, transferred property of the debtor . . . within one year before the date of the filing of the petition in violation of 11 U.S.C. § 727(a)(2)(A)." Although such conduct may have been the grounds for denial of discharge under § 727(a)(2)(A) in the Prior Bankruptcy Case, such findings are insufficient for a determination that the San Bernardino Transfer was willful and malicious conduct under § 523(a)(6).

Accordingly, the Court will deny summary judgment on Plaintiff's claim under 11 U.S.C. § 523(a)(6).

***D. 11 U.S.C. § 523(a)(10)***

Plaintiff has met its burden of proving that it is entitled to summary judgment on its 11 U.S.C. § 523(a)(10) claim based on the Prepetition State Court Actions and the 727 Judgment.

On October 26, 2009, Plaintiff filed the First State Court Action against Mr. Loghmani and other defendants. On October 28, 2011, Plaintiff filed and the Second

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

State Court Action against Defendants and other defendants. On March 29, 2012, Mr. Loghmani filed the Prior Bankruptcy Case, listing the Prepetition State Court Actions in his SOFA.

On November 30, 2012, the UST filed the UST Adversary Proceeding against Mr. Loghmani. On January 7, 2014, this Court entered the 727 Judgment. Because Mr. Loghmani listed the debts arising from the Prepetition State Court Actions in his schedules in the Prior Bankruptcy Case, the 727 Judgment denied Mr. Loghmani's discharge as to all debts, including the Prepetition State Court Actions. Therefore, the debts arising from the Prepetition State Court Actions are nondischargeable in this case pursuant to § 523(a)(10).

Accordingly, Plaintiff is entitled to summary judgment on its claim for relief under § 523(a)(10) as to Mr. Loghmani.

**IV. CONCLUSION**

The Court will enter judgment in favor of Plaintiff as follows:

- Judgment for Plaintiff on Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) based on the First State Court Judgment as to Mr. Loghmani;
- Judgment for Plaintiff on Plaintiff's claim under 11 U.S.C. § 523(a)(10) as to Mr. Loghmani.

The Court will not enter judgment as to Plaintiff's remaining claims under 11 U.S.C. § 523(a)(2)(A) or on Plaintiff's claim under 11 U.S.C. § 523(a)(6).

Plaintiff must submit a proposed judgment within seven (7) days.

**Footnotes**

1. On October 31, 2012, Plaintiff removed the Second State Court Action to this Court, commencing adversary proceeding no. 1:12-ap-01386-VK against Mr. Loghmani. On May 3, 2013, the Court entered an order remanding the Second State Court Action [adv. no. 1:12-ap-01386-VK, doc. 6.].
2. Plaintiff cites *Bammer, supra*, as authority for the proposition that a "debt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

arising from fraudulent conveyance [is] not dischargeable." Although this proposition reflects the holding of *Bammer*, *Bammer* does not address the sufficiency of findings in prior judgments required for issue preclusion under § 523(a)(6).

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

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #14.00** Status conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18

Docket 30

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 21, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**1:11-23581 Thomas Henry Majcher and Maria A. Majcher**

**Chapter 7**

**#1.00** Notice of trustee's final report and applications for compensation

David Gottlieb - Chapter 7 Trustee

Sulmeyer Kupetz - Attorney for Trustee

Berkeley Research Group, LLC - Accountant for Trustee

Docket 64

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$8,132.83 and reimbursement of expenses of \$68.79.

SulmeyerKupetz APC, counsel to chapter 7 trustee – approve fees of \$44,536.50 and reimbursement of expenses of \$1,047.39.

Berkeley Research Group, LLC, accountant to chapter 7 trustee – approve fees of \$7,389.50 and reimbursement of expenses of \$14.99.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Thomas Henry Majcher

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Thomas Henry Majcher and Maria A. Majcher**

**Chapter 7**

**Joint Debtor(s):**

Maria A. Majcher

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Elizabeth Jiang  
Steven Werth  
Jason Balitzer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**1:11-23725 DynaPump, Inc.**

**Chapter 7**

**#2.00** Trustee's final report and applications for compensation

Diane Weil - Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP - Attorney for Trustee

Menchaca & Company - Accountant for Trustee

Docket 145

**Tentative Ruling:**

Diane C. Weil, chapter 7 trustee – approve fees of \$16,258.61 and reimbursement of expenses of \$347.50 on a final basis. All fees and expenses approved on an interim basis are approved on a final basis. The trustee is authorized to collect the remaining balance of \$6,550.96 in fees and \$198.63 in expenses.

Danning, Gill, Diamond & Kollitz LLP (“Danning Gill”), counsel to chapter 7 trustee – approve fees of \$69,366.00 and reimbursement of expenses of \$8,210.99. All fees and expenses approved on an interim basis are approved on a final basis. Danning Gill is authorized to collect the remaining balance of \$37,520.50 in fees and \$6,607.72 in expenses. The Court will not approve \$1,997.00 in fees and \$9.84 in expenses for the reasons below.

Menchaca & Company LLP, accountant to chapter 7 trustee – approve fees of \$9,760.00 and reimbursement of expenses of \$1,856.10.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 22, 2018

Hearing Room 301

10:30 AM

CONT... **DynaPump, Inc.**

Chapter 7

compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

In accordance with the foregoing, the Court will not approve the following estimated time for appearance at the hearing on the final fee application, because such appearances are waived:

Category	Date	Description	Time	Fee
Fee / Employment Application	9/27/17	APPEARANCE AT HEARING ON FINAL FEE APPLICATION	2	\$1,390.00

The Court will also not approve the following estimated expenses:

Date	Description	Fee
9/27/17	MILEAGE - FEE APPL HEARING (ESTIMATE)	\$9.84

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court's refusal to approve fees for the following services performed by the trustee's counsel with respect to the debtors' real property: "negotiating with the debtors' attorney regarding the sale of the equity to the debtors; [and] reviewing the title report." *Garcia*, 335 B.R. at 726.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 22, 2018

Hearing Room 301

10:30 AM

CONT... **DynaPump, Inc.**

Chapter 7

With respect to its holding, the BAP explained that "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee. Routine negotiations regarding the sale of real property are properly within the trustee's province. . . . Employment of counsel to assist in the sale did not give counsel a free rein to step into the trustee's shoes and undertake efforts statutorily assigned to the trustee." *Id.* at 727.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the BAP upheld the bankruptcy court's refusal to approve fees for preparation of employment applications, observing that "absent a showing by applicant to the contrary, routine employment applications remain a trustee duty." *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee." *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Description	Time	Fee
Fee / Employment Application	12/29/16	PREPARE MOTION TO RATIFY	0.6	\$117.00
Fee / Employment Application	1/5/17	REVIEW AND REVISE MOTION TO RATIFY	0.4	\$78.00
Fee / Employment Application	1/12/17	REVISE MOTION TO RATIFY	0.3	\$58.50
Fee / Employment Application	1/17/17	REVISE MOTION TO RATIFY	0.2	\$39.00
Fee / Employment Application	2/3/17	PREPARE MOTION TO RATIFY EMPLOYMENT	0.2	\$139.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**CONT... DynaPump, Inc.**

**Chapter 7**

Fee / Employment Application	2/3/17	REVISE MOTION TO RATIFY	0.4	\$78.00
Fee / Employment Application	2/27/17	PREPARE ORDER RE MOTION TO RATIFY	0.2	\$39.00
Fee / Employment Application	2/27/17	PREPARE DECLARATION OF NON OPPOSITION TO MOTION TO RATIFY	0.2	\$39.00
Fee / Employment Application	2/27/17	CHECK PACER FOR ANY OPPOSITION TO MOTION TO RATIFY	0.1	\$19.50

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

DynaPump, Inc.

Represented By  
Rachel Ragni Larrenaga

**Trustee(s):**

Diane C Weil (TR)

Represented By  
Steven J Schwartz  
Kevin Meek  
Richard K Diamond  
Sonia Singh

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**1:14-13981 Encino Center LLC**

**Chapter 11**

**#3.00** Motion for attorney fees and costs re order sustaining objection of Encino Center, LLC to claim of Hayk Shishoyan dba Encino Tailors [Claim No. 8-1] and disallowing claim

fr. 10/19/17; 10/26/17; 11/2/17, 12/7/17; 12/21/17 (stip);  
1/25/18(stip)

Docket 356

**Tentative Ruling:**

In light of the pending *Motion of Encino Center, LLC for an Order Approving Settlement Agreement and Mutual Release Between Hayk Shishoyan, DBA Encino Tailors and Encino Center, LLC* [doc. 407], the Court will continue this hearing until 10:30 a.m. on March 29, 2018.

Appearances on February 22, 2018 are excused.

**Party Information**

**Debtor(s):**

Encino Center LLC

Represented By  
Sandford L. Frey  
Stuart I Koenig  
Marta C Wade  
Fredric J Greenblatt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#4.00** Application for interim fees and/or expenses by Giovanni Orantes,  
debtor's attorney

Docket 230

**Tentative Ruling:**

The Court will continue the hearing on this matter to **March 8, 2018 at 10:30 a.m.**

Appearances on February 22, 2018 are excused.

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

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes  
Luis A Solorzano



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#5.00** Application for payment of interim fees and/or expenses  
for AOE Law & Associates, Debtor's Attorney  
Period: 5/12/2017 to 12/18/2017

fr. 1/11/18

Docket 81

**Tentative Ruling:**

At the prior hearing regarding this application, this Court continued the hearing to a date after the hearing on the adequacy of the debtor's proposed Disclosure Statement for the solicitation of votes. On February 8, 2018, the Court continued the hearing on the adequacy of that Disclosure Statement to March 29, 2018. Accordingly, the Court will continue the hearing on this application to **April 5, 2018 at 10:30 a.m.**

Appearances on February 22, 2018 are excused.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

2:00 PM

**1:14-12518 Mohammad Mihandoust**

**Chapter 7**

**#6.00** Motion to avoid judicial lien of NF Plant Enterprises, LP

Docket 33

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mohammad Mihandoust

Represented By  
Bryan Diaz

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 22, 2018

Hearing Room 301

2:00 PM

1:16-13009 Ronald Asher Halper and June Halper

Chapter 7

- #7.00 Motion of trustee for order:
- (1) Authorizing sale of real property free and clear of liens and encumbrances;
  - (2) Approving overbid procedures;
  - (3) Authorizing payments of undisputed liens, costs of sale, and property taxes;
  - (4) Authorizing payments of homestead exemption to debtors and proportionate share of net sale proceeds to Florence Temkin Family Trust dated November 2, 1999 in accordance with court-approved settlement; and
  - (5) Finding that purchaser is good faith purchaser under 11 U.S.C. § 363(m)

Docket 56

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Ronald Asher Halper

Represented By  
Rob R Nichols

**Joint Debtor(s):**

June Halper

Represented By  
Rob R Nichols

**Trustee(s):**

David Seror (TR)

Represented By  
Robert A Hessling

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

2:00 PM

**1:17-10469 Jon Roger Davis**

**Chapter 7**

**#8.00** Motion to vacate the order of the court dismissing chapter 7 case and reinstating the case

Docket 43

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jon Roger Davis

Represented By  
Michael Jay Berger

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11661 Hilario Adalberto Rivas Acevedo**

**Chapter 7**

**#9.00** Trustee's motion for dismissal of chapter 7 Case pursuant to 11 U.S.C Sec. 305 or sec. 707 for failure to comply with trustee's request for documents and/or amendments to schedules and for revocation of debtor's discharge

Docket 14

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 2/1/18. [Doc#18]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hilario Adalberto Rivas Acevedo                      Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)                                      Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

2:00 PM

**1:17-13053 Richard James Quiroz**

**Chapter 7**

**#10.00** Debtor's motion to reconsider order granting motion amend filed by U.S. Trustee pursuant to Federal Rule of Bankruptcy Procedure

Docket 31

**Tentative Ruling:**

The Court will deny the debtor's motion for reconsideration.

**I. Background**

On November 15, 2017, the debtor filed this bankruptcy petition, his sixth since 2009. Each of the debtor's prior cases was dismissed either for his failure to file his schedules or for his failure to make plan payments [doc. 15, pp. 3-4].

The debtor's November 15 filing included only the petition, statement of related cases, and mailing list. On November 15, the Court served the debtor with a Case Commencement Deficiency Notice and an Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case [doc. 6]. The order directed the debtor to file complete schedules on or before November 29, 2017. The debtor failed to file complete schedules. On December 4, 2017, the Court entered an order dismissing the debtor's case [doc. 10].

On December 15, 2017, the United States Trustee ("UST") filed a motion to amend the order dismissing this case to include a one-year bar to re-filing (the "Motion to Amend") based on the debtor's repeated, dismissed bankruptcy cases [doc. 12]. On December 28, 2017, the debtor filed an opposition to the Motion to Amend, stating that he is unable to pay attorney's fees and was unable to timely file his schedules due to "medical conditions" [doc. 23, p. 2]. On December 29, 2017, the UST filed a reply to the debtor's opposition, citing apparent inaccuracies in the debtor's November 15 petition, including a statement that he had not filed a bankruptcy case in the past 8 years [doc. 24].

Prior to the hearing on the Motion to Amend on January 18, 2017, the Court issued a tentative ruling discussing the UST's request under 11 U.S.C. § 707(b)(3).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, February 22, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT...**

**Richard James Quiroz**

**Chapter 7**

The Court stated that the debtor's noncompliance with 11 U.S.C. § 707(a), history of filings and dismissals and apparent inaccuracies in his schedules persuaded it that dismissal with a 180 day bar pursuant to 11 U.S.C. § 109(g) was appropriate. The Court specifically cautioned the debtor:

if the debtor does not appear for cross-examination, or the Court determines after the debtor's cross-examination that the debtor did not file this case in good faith, the Court will grant the motion to amend the dismissal order to include a 180-day bar to refiling.

...

Unless the debtor provides a reasonable explanation of his conduct, the Court is inclined to dismiss this case with a 180-day bar. 11 U.S.C. §§ 105(a), 109 (g).

The debtor did not appear at the hearing, despite the Court's warning. On January 25, 2018, the Court issued an order granting the UST's Motion to Amend [doc. 28]. The debtor's motion for reconsideration [doc. 31], seeks relief from that order.

The debtor's motion for reconsideration states that the Court dismissed his case due to his "mistake, inadvertence and excusable neglect" [doc 31, p. 3]. However, the debtor does not explain the circumstances of his mistake, inadvertence and excusable neglect, and only states that he filed without an attorney and was working to find an attorney at the time the case was dismissed.

## **II. Discussion**

The debtor correctly identifies the standard for reconsideration and excusable neglect in this Circuit. Motions for reconsideration are governed by Federal Rule of Civil Procedure ("Rule") 60(b), which provides that "[o]n motion and just terms, the court may relieve a party its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect."

Because Congress has provided no other guideposts for determining

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 22, 2018

Hearing Room 301

2:00 PM

CONT...

**Richard James Quiroz**

**Chapter 7**

what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [Debtor], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395 (1993). The debtor argues that all of the factors from *Pioneer* should be resolved in his favor, but this Court finds that the factors weigh against revising the Court's decision to include the 180-day bar, as follows:

Prejudice to the Debtor: The debtor correctly states that denying the pending motion would be prejudicial to him because he will be barred from filing another bankruptcy petition for 180 days. Consequently, this factor weighs in favor of the Court reconsidering the Order.

Length of Delay and its Potential Impact: The debtor brought the motion within a reasonable time after the Court entered the Order. The delay in filing is not an issue here.

However, in order to be present for cross-examination by the UST, the debtor was ordered to appear at the hearing on January 18, 2018. The debtor had an opportunity to explain his opposition to the Motion to Amend to the Court. The debtor chose not to attend the hearing. The debtor has provided no additional evidence in the Motion to explain why the debtor was not at the hearing.

Additionally, if the Court vacates the Motion to Amend, the debtor would be able to file a bankruptcy petition earlier than 180 days. The debtor has had five prior bankruptcy filings, three within the last three years. This behavior suggests that the debtor will continue to fail to prosecute any future bankruptcy case he may file.

Reason for the Delay: As stated above, the debtor did not cause any significant delay in filing the motion. However, the debtor's failure to appear at the hearing caused delay in the resolution of the Motion to Amend.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, February 22, 2018

Hearing Room 301

2:00 PM

CONT... Richard James Quiroz

Chapter 7

The debtor does not explain why he did not attend the January 18, 2018, hearing when the Court's tentative ruling instructed him to attend. Based on the tentative ruling, the debtor was aware that the Court's decision regarding the Motion to Amend would likely depend on his appearance at the hearing. The debtor had the opportunity to present more evidence in support of his position at the hearing and chose not to attend. Now, the debtor would like another bite at the apple, but has not explained what "mistake, surprise, inadvertence or excusable neglect" prevented him from appearing at the hearing. The debtor failed to meet his burden on this factor.

Whether Movant Acted in Good Faith: According to the debtor, he is acting in good faith to reorganize his finances. However, the debtor's five prior incomplete filings or chapter 13 cases that were dismissed for failure to make plan payments suggest otherwise. Furthermore, the debtor's failure to attend a hearing contrary to the Court's instructions causes further delay and suggests that he is not committed to proper prosecution of a bankruptcy case.

The debtor presented no new evidence or explanation in the motion that is relevant to the Court's decision to grant the Motion to Amend. The debtor's conduct, history of filings and failure to explain himself in the motion suggest that he is not fully committed to prosecuting a bankruptcy case, and therefore the debtor must be engaging in these activities willfully in order to delay creditors. The "bad faith" factor weighs against granting the motion.

**III. Conclusion**

For the reasons stated above, the Court will deny the motion for reconsideration. The UST must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Richard James Quiroz

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, February 26, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13428 Michael Rodriguez**

**Chapter 13**

**#1.00** Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION  
VS  
DEBTOR

[EVIDENTIARY HEARING]

fr. 1/10/18; 1/17/18

Docket 18

**\*\*\* VACATED \*\*\* REASON: Order ent 2/7/18 approving stip to cont to  
3/27/18 at 9:30 a.m.**

**Party Information**

**Debtor(s):**

Michael Rodriguez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

9:30 AM

1:18-10337 Serozha Harutyunyan

Chapter 7

#0.10 Motion for relief from stay [RP]

CANYON'S EDGE COMMUNITY ASSOCIATION  
VS  
DEBTOR

Docket 7

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Serozha Harutyunyan

Represented By  
Anita Khachikyan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Serozha Harutyunyan**

**Chapter 7**

**Movant(s):**

Canyon's Edge Community

Represented By  
Matthew T Plaxton

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

9:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#1.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 50

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

David Polushkin

Represented By  
Elena Steers

**Joint Debtor(s):**

Inessa Polushkin

Represented By  
Elena Steers

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... David Polushkin and Inessa Polushkin**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**1:16-11375 Mary Culp**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

CALIBUR HOME LOANS, INC.  
VS  
DEBTOR

Docket 52

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mary Culp

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10288 Adaure Chinyere Egu**

**Chapter 13**

**#3.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 10

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Adaure Chinyere Egu

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

9:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

Between the years 2009 and 2015, Mitchell S. Cohen (the “Debtor”) filed five prior bankruptcy cases that were subsequently dismissed.

**A. First Bankruptcy Case**

On November 2, 2009, the Debtor filed case no. 1:09-bk-24597-VK (the “First Bankruptcy Case”). On April 26, 2010, the Court entered an order confirming the Debtor’s first amended chapter 13 plan [case no. 1:09-bk-24597-VK, doc. 33]. On August 20, 2010, the chapter 13 trustee (the “Trustee”) filed a motion to dismiss the First Bankruptcy Case after the Debtor failed to make the required plan payments [case no. 1:09-bk-24597-VK, doc. 38]. On August 25, 2010, OneWest Bank, FSB (“OneWest Bank”) filed a motion for relief from the automatic stay as to the real property located at 12435 Kagel Canyon Rd., Sylmar, California 91342 (the “Property”), after the Debtor failed to make postpetition payments to OneWest Bank [case no. 1:09-bk-24597-VK, doc. 39]. On September 21, 2010, the Court entered an order dismissing the First Bankruptcy Case [case no. 1:09-bk-24597-VK , doc. 43]. On September 22, 2010, the Court entered an order granting OneWest Bank relief from the automatic stay as to the Property [case no. 1:09-bk-24597-VK, doc. 42].

**B. Second Bankruptcy Case**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mitchell S. Cohen**

**Chapter 13**

On September 23, 2010, two days after the First Bankruptcy Case was dismissed, the Debtor filed case no. 1:10-bk-22001-VK (the “Second Bankruptcy Case”). On February 8, 2011, the Court entered an order confirming the Debtor’s first amended chapter 13 plan [case no. 1:10-bk-22001-VK, doc. 33]. On January 18, 2012, the Court entered an order dismissing the Second Bankruptcy Case after the Debtor failed to make his plan payments [case no. 1:10-bk-22001-VK, doc. 57].

**C. Third Bankruptcy Case**

On January 19, 2012, one day after the Second Bankruptcy Case was dismissed, the Debtor filed case no. 1:12-bk-10560-VK (the “Third Bankruptcy Case”). On September 26, 2012, the Court entered an order confirming the Debtor’s first amended chapter 13 plan [case no. 1:12-bk-10560-VK, doc. 44]. On November 14, 2013, the Court entered an order dismissing the Third Bankruptcy Case after the Debtor failed to make plan payments [case no. 1:12-bk-10560-VK, doc. 95].

**D. Fourth Bankruptcy Case**

On November 19, 2013, five days after the Third Bankruptcy Case was dismissed, the Debtor filed case no. 1:13-bk-17300-MB (the “Fourth Bankruptcy Case”). On September 29, 2014, OneWest Bank N.A. (the successor to OneWest Bank, FSB) filed a motion for relief from the automatic stay as to the Property after the Debtor failed to make postpetition payments to OneWest Bank N.A. [case no. 1:13-bk-17300-MB, doc. 67]. On October 20, 2014, the Court entered an order granting the motion for relief from the automatic stay as settled by stipulation [case no. 1:13-bk-17300-MB, doc. 72]. On February 17, 2015, the Court entered an order confirming the Debtor’s third amended chapter 13 plan [case no. 1:13-bk-17300-MB, doc. 91]. On September 4, 2015, the Court entered an order dismissing the Fourth Bankruptcy Case after the Debtor failed to make plan payments [case no. 1:13-bk-17300-MB, doc. 111].

**E. Fifth Bankruptcy Case**

On November 10, 2015, the Debtor filed case no. 1:15-bk-13714-VK (the “Fifth Bankruptcy Case”).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Mitchell S. Cohen**

**Chapter 13**

**1. CIT Bank's Motion for Relief from the Automatic Stay**

On December 16, 2015, CIT Bank, N.A. ("CIT Bank," the successor in interest to OneWest Bank N.A.) filed a motion for relief from the automatic stay after the Debtor failed to make postpetition payments to CIT Bank [case no. 1:15-bk-13714-VK, doc. 21]. On January 5, 2016, the Court entered an order granting the motion for relief from the automatic stay as settled by stipulation [case no. 1:15-bk-13714-VK, doc. 26]. On June 24, 2016, the Court entered an order confirming the Debtor's first amended chapter 13 plan [case no. 1:15-bk-13714-VK, doc. 71]. Under the first amended plan, the Debtor was to pay \$500.00 per month for the first 12 months, then \$2,159 per month for months 13 through 60. (Case no. 1:15-bk-13714-VK, doc. 65, at p. 2.)

**2. CIT Bank's Default Declaration**

On October 26, 2017, after the Debtor failed to make postpetition payments pursuant to Court order, CIT Bank filed a declaration of default (the "Default Declaration") [case no. 1:15-bk-13714-VK, doc. 97]. On November 3, 2017, the Debtor filed an opposition to the Default Declaration, stating that he had cured the default [case no. 1:15-bk-13714-VK, doc. 99]. On November 4, 2017, the Court entered an order setting a hearing on the Default Declaration [case no. 1:15-bk-13714-VK, doc. 109]. At the hearing on December 20, 2017, the Court continued the matter to January 17, 2018 to allow the parties to review whether the Debtor was current on his payments to CIT Bank.

**3. The Chapter 13 Trustee's Motion to Dismiss**

On May 9, 2017, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the Fifth Bankruptcy Case because of the Debtor's failure to make plan payments in the total amount of \$9,374 (the "Motion to Dismiss") [doc. 87]. On May 16, 2017, the Debtor filed an opposition to the Motion to Dismiss [doc. 88], in which he stated he would bring the receipts of his payments to CIT Bank to the hearing and/or file a motion to modify his plan. The hearing on the Motion to Dismiss was continued several times. At the August 8, 2017 hearing on the Motion to Dismiss, the Trustee stated that the Debtor's plan delinquency had increased to \$12,351, but that the Debtor had paid the Trustee \$6,000 on that day. At the November 7, 2017 hearing, the Trustee stated that the Debtor's plan delinquency was \$12,828, but the Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mitchell S. Cohen**

**Chapter 13**

paid the Trustee \$3,000 that day. At the January 9, 2018 hearing, the Trustee stated that the Debtor's plan delinquency was \$14,146. On January 10, 2018—before the continued hearing on the Default Declaration—the Court entered an order dismissing the Fifth Bankruptcy Case [case no. 1:15-bk-13714-VK, doc. 110].

**F. The Pending Bankruptcy Case and Motion to Continue Stay**

On February 1, 2018, the Debtor filed the pending case. In his schedules, the Debtor lists monthly income of \$7,040 and monthly expenses of \$6,539.02, leaving net monthly income of \$500.98. (Doc. 12, at p. 30.) In his chapter 13 plan (the "Plan"), the Debtor proposes a \$500 monthly payment for the first twelve months, followed by a step-up payment of \$2,899.32 for months 13 through 60. (Doc. 15, at p. 2.)

On February 2, 2018, the Debtor filed a Motion for Order Imposing a Stay or Continuing the Automatic Stay (the "Motion to Continue Stay") [doc. 6]. In support of the Motion to Continue Stay, the Debtor states that during the Fifth Bankruptcy Case, he was injured in a serious car accident and had his driver's license temporarily suspended. As a result, the Debtor was unable to work and fell behind on his plan payments. (Declaration of Mitchell S. Cohen, doc. 6, ¶ 2.) Since then, the Debtor was cleared to drive again and he was contracted for three major projects that will keep him employed throughout the year and provide sufficient, stable income to fund the Plan. (*Id.*, at ¶ 3.)

On February 14, 2018, CIT Bank filed an opposition to the Motion to Continue Stay [doc. 17]. CIT Bank argues that the Debtor's case was filed in bad faith and is the latest in a series of cases impeding CIT Bank's efforts to obtain possession of the Property. According to CIT Bank, the Debtor has not provided sufficient evidence of good faith, or evidence that he can afford to pay the step-up payments after the initial 12 months of the Plan.

**II. DISCUSSION**

Pursuant to 11 U.S.C. § 362(c)(3),

[I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mitchell S. Cohen**

**Chapter 13**

was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mitchell S. Cohen**

**Chapter 13**

court; or

(cc) perform the terms of a plan confirmed by the court;  
or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor  
[.]

The Fifth Bankruptcy Case was dismissed on January 10, 2018. The Debtor filed his pending bankruptcy case on February 1, 2018. Pursuant to § 362(c)(3)(C)(i)(II)(cc), there is a presumption that the Debtor's pending bankruptcy case was not filed in good faith as to all creditors, because the Debtor's Fifth Bankruptcy Case was dismissed for failure to perform the terms of his confirmed plan. In addition, pursuant to § 362(c)(3)(C)(ii), there is a presumption that the Debtor's pending bankruptcy case was not filed in good faith as to CIT Bank, because in the Fifth Bankruptcy Case, CIT Bank had filed a motion for relief from the automatic stay that was resolved by stipulation.

In support of the Motion to Continue Stay, the Debtor has provided some evidence of an improvement in his financial situation since the dismissal of the Fifth Bankruptcy Case. The Debtor's driver's license was reinstated and the Debtor appears to have steady employment and sufficient income to pay his Plan payments for the next twelve

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Mitchell S. Cohen**  
months.

**Chapter 13**

However, the Debtor has not provided clear and convincing evidence to rebut the presumption that the pending bankruptcy case was filed in bad faith. Since 2009, the Debtor has not been able to perform under the terms of his prior confirmed chapter 13 plans. CIT Bank and its predecessors have filed a motion for relief from the automatic stay as to the Property in three different bankruptcy cases filed by the Debtor. In the Fifth Bankruptcy Case, the Debtor defaulted under the terms of the stipulation resolving CIT's motion for relief from the automatic stay.

In addition, in the Fifth Bankruptcy Case, the Court confirmed a step-up plan where the Debtor was to pay \$500 per month for the first 12 months, then \$2,159 per month for months 13 through 60. When the Fifth Bankruptcy Case was dismissed, the Debtor had a plan delinquency in the amount of \$14,146. As CIT Bank notes, the Debtor has not shown by clear and convincing evidence that he will be able to afford the \$2,899.32 monthly payment for months 13 through 60 under the present Plan.

**III. CONCLUSION**

In light of the foregoing, the Court will deny the Motion to Continue Stay.

CIT Bank must submit the order within seven (7) days.

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

**Debtor(s):**

Mitchell S. Cohen

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#5.00** Plaintiff's motion for leave to join additional party defendants pursuant to Fed. R. Bankr. Pro. 7020

fr. 2/7/18

Docket 205

**Judge:**

**2/7/2018 Tentative:**

Grant.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine (the "Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. Plaintiff opposes the Motions in Limine [doc. 233]. Finally, on January 17, 2018, the State Bar filed another protective order (the "Motion for Global Protective Order") [doc. 225], requesting a global protective order to govern this adversary proceeding. On January 24, 2018, Plaintiff filed a response to the Motion for Global Protective Order [doc. 244].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

**II. ANALYSIS**

***A. Rule 20***

Pursuant to Federal Rule of Civil Procedure ("Rule") 20(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7020—

(a) Persons Who May Join or Be Joined.

(2) *Defendants*. Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

"Rule 20 is designed to promote judicial economy, and reduce inconvenience, delay, and added expense ." *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). Courts construe the requirements of Rule 20 liberally to promote trial convenience and to expedite determination of disputes. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.").

Here, both conditions to joinder are met. First, the proposed second amended complaint is requesting relief against all defendants jointly and severally, and Plaintiff's alleged right to relief from the defendants arises out of the same occurrence, namely, the refusal to lift Plaintiff's involuntary inactive enrollment. In addition, any question of law or fact common to all defendants will arise in this adversary proceeding. As such, joining the additional defendants named by Plaintiff is appropriate.

***B. Rule 15***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

The State Bar does not oppose joinder pursuant to Rule 20. Rather, the State Bar asserts that Plaintiff cannot amend the FAC on account of Rule 16(b)(4), which states that "[a] schedule may be modified only for good cause and with the judge's consent." Rule 16(b)(4) is inapplicable. The Court did not enter a scheduling order providing a deadline by which Plaintiff may amend the FAC or join parties. In addition, based on the Plaintiff's pending motion to extend dates and deadlines, the Court will be modifying the current scheduling order.

The Rule controlling amendments to complaints is Rule 15. Pursuant to Rule 15(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7015—

(1) Amending as a Matter of Course.

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) Other Amendments.

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.

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted).  
Based on this standard, the Court will grant Plaintiff leave to amend the FAC.

***1. Plaintiff is Not Acting in Bad Faith***

"Bad faith in filing a motion for leave to amend exists when the addition of new legal theories are baseless and presented for the purpose of prolonging the litigation." *Paz v. City of Aberdeen*, 2013 WL 6163016, at \*5 (W.D. Wash. Nov. 25, 2013).

The State Bar asserts that Plaintiff is acting in bad faith because the caption to the proposed second amended complaint includes Mr. Dunn and Mr. Bacon as defendants. However, it appears this is a mistake; Plaintiff does not include allegations against Mr. Dunn or Mr. Bacon in the proposed second amended complaint. Regarding the Plaintiff's allegations in the proposed second amended complaint regarding the defendants' legal arguments, as discussed below, the Court will strike these paragraphs from the proposed second amended complaint.

***2. There is No Undue Delay***

Here, Plaintiff notes that she learned the identities of the six new defendants after receiving the State Bar's responses to the first and second set of interrogatories. Plaintiff received these responses on October 10, 2017 and November 8, 2017, respectively. Plaintiff filed the Motion to Join approximately a month and a half later. As such, there was no undue delay in filing the Motion to Join. In addition, the Court is extending all deadlines in this adversary proceeding, including the discovery cutoff date. In light of this fact, allowing the amendment will not cause undue delay to the proceeding.

***3. Prejudice to Opposing Party***

Although granting the Motion to Join may result in additional filings, such as another

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

motion to dismiss, the State Bar will not be significantly prejudiced by the delay because the Court is extending deadlines for the parties to complete discovery. The State Bar states that Plaintiff's amendment will not have any impact on the amount of damages. However, the amendment may have an impact regarding which parties are liable for the damages. The State Bar has not provided that it will be prejudiced in any other way.

**4. *The Proposed Second Amended Complaint is Only Partially Futile***

"A proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Paz*, 2013 WL 6163016 at \*5.

The State Bar asserts that the amendments are futile because: (A) the individual defendants have qualified immunity; and (B) Plaintiff has failed to state a claim for punitive damages.

Regarding the State Bar's assertion about qualified immunity, the Court cannot yet determine whether the individual defendants are immune. Government employees are entitled to qualified immunity "unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982)); see also *Hirsh v. Justices of Supreme Court of State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (finding that employees of the State Bar of California are state agency officials); and *Melek v. State Bar of California*, 230 F.3d 1367 (9th Cir. 2000) (holding that a state bar employee is an official who may be entitled to qualified immunity). "Determining whether a public official is entitled to qualified immunity 'requires a two-part inquiry: (1) Was the law governing the state official's conduct clearly established? (2) Under that law could a reasonable state official have believed his conduct was lawful?'" *Id.* (quoting *Browning v. Vernon*, 44 F.3d 818, 822 (9th Cir. 1995)). Without additional briefing by the parties, the Court does not have enough information or legal authority at this time to ascertain whether the individual defendants' conduct was equivalent to the conduct of "reasonable state officials."

The Court also cannot determine at this time if the individual defendants are liable for damages. Pursuant to 11 U.S.C. § 362(k)(1), "an individual injured by any willful

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." A stay violation is willful 'if a party knew of the automatic stay, and its actions in violation of the stay were intentional.'" *In re Stanwyck*, 450 B.R. 181, 191-92 (Bankr. C.D. Cal. 2011) (quoting *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). On the other hand, "[a]n award of punitive damages requires 'some showing of reckless or callous disregard for the law or rights of others.'" *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014) (quoting *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989)). Again, the Court does not have enough information to make the pertinent determination at this time.

The Court will, however, strike the portions of the proposed second amended complaint that request relief based on the defendants' legal arguments to the Court. Proposed Second Amended Complaint [doc. 205, Exhibit A], ¶¶ 41-43, 49-51 and ¶ 3 of pp. 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not." The Court will strike these paragraphs (or portions of paragraphs) because the Court has already ruled that Plaintiff's request for punitive damages or sanctions cannot be based on the defendants' legal arguments to this Court. Ruling, pp. 12-13.

### **III. CONCLUSION**

The Court will grant the Motion to Join and allow Plaintiff to file the proposed second amended complaint, with the following modifications: (A) Plaintiff must exclude Kenneth Bacon and Joseph Dunn from the caption; and (B) Plaintiff must delete the following paragraphs or portions of paragraphs: paragraphs 41-43, 49-51 and paragraph 3 of pages 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not."

Plaintiff must submit an order within seven (7) days.

#### **Tentative Ruling:**

Grant in part.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. The Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery. On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125].

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205], attaching a proposed second amended complaint. In the proposed second amended complaint, Plaintiff adds six individuals as defendants: (A) Starr Babcock, who served as General Counsel of State Bar; (B) Thomas A. Miller, who served as the General Counsel of the State Bar after Mr. Babcock; (C) Lawrence Yee, who served as Deputy General Counsel of the State Bar; and (D) three additional defendants who the State Bar identified as being involved with Plaintiff's involuntary inactive enrollment.

As to Mr. Babcock, Mr. Miller and Mr. Yee, Plaintiff alleges that these individuals did not implement policies and procedures to ensure that the State Bar did not violate the automatic stay or discharge injunction. Proposed Second Amended Complaint, ¶ 34. Plaintiff also alleges that Mr. Babcock, Mr. Miller and Mr. Yee refused to reinstate Plaintiff's license and were responsible for approving the State Bar's refusal to honor bankruptcy stays. *Id.*, ¶¶ 38-40. In addition, Plaintiff alleges that the Court should sanction all of the defendants, and award Plaintiff punitive damages, based on the defendants' legal argument to this Court that Plaintiff's involuntary inactive enrollment was "disciplinary." *Id.*, ¶¶ 41-43, 49-51, pp. 16-17, ¶ 3.

## **II. ANALYSIS**

### ***A. Rule 20***

Pursuant to Federal Rule of Civil Procedure ("Rule") 20(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7020—

(a) Persons Who May Join or Be Joined.

(2) *Defendants.* Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

"Rule 20 is designed to promote judicial economy, and reduce inconvenience, delay, and added expense." *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). Courts construe the requirements of Rule 20 liberally to promote trial convenience and to expedite determination of disputes. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.").

Here, both conditions to joinder are met. First, the proposed second amended complaint is requesting relief against all defendants jointly and severally, and Plaintiff's alleged right to relief from the defendants arises out of the same occurrence, namely, the refusal to lift Plaintiff's involuntary inactive enrollment. In addition, any question of law or fact common to all defendants will arise in this adversary proceeding. As such, joining the additional defendants named by Plaintiff is appropriate.

***B. Rule 15***

The State Bar does not oppose joinder pursuant to Rule 20. Rather, the State Bar asserts that Plaintiff cannot amend the FAC on account of Rule 16(b)(4), which states that "[a] schedule may be modified only for good cause and with the judge's consent." Rule 16(b)(4) is inapplicable. The Court did not enter a scheduling order providing a deadline by which Plaintiff may amend the FAC or join parties. In addition, based on the Plaintiff's pending motion to extend dates and deadlines, the Court will be modifying the current scheduling order.

The Rule controlling amendments to complaints is Rule 15. Pursuant to Rule 15(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7015—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

(1) Amending as a Matter of Course.

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) Other Amendments.

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.

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted). Based on this standard, the Court will grant Plaintiff leave to amend the FAC.

***1. Plaintiff is Not Acting in Bad Faith***

"Bad faith in filing a motion for leave to amend exists when the addition of new legal theories are baseless and presented for the purpose of prolonging the litigation." *Paz v. City of Aberdeen*, 2013 WL 6163016, at \*5 (W.D. Wash. Nov. 25, 2013).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

The State Bar asserts that Plaintiff is acting in bad faith because the caption to the proposed second amended complaint includes Mr. Dunn and Mr. Bacon as defendants. However, it appears this is a mistake; Plaintiff does not include allegations against Mr. Dunn or Mr. Bacon in the proposed second amended complaint. Regarding the Plaintiff's allegations in the proposed second amended complaint regarding the defendants' legal arguments, as discussed below, the Court will strike these paragraphs from the proposed second amended complaint.

***2. There is No Undue Delay***

Here, Plaintiff notes that she learned the identities of three of the new defendants after receiving the State Bar's responses to the first and second set of interrogatories. Plaintiff received these responses on October 10, 2017 and November 8, 2017, respectively. Plaintiff filed the Motion to Join approximately a month and a half later. As such, there was no undue delay in filing the Motion to Join. In addition, the Court is extending all deadlines in this adversary proceeding, including the discovery cutoff date. In light of this fact, allowing the amendment will not cause undue delay to the proceeding.

***3. Prejudice to Opposing Party***

Although granting the Motion to Join may result in additional filings, such as another motion to dismiss, the State Bar will not be significantly prejudiced by the delay because the Court is extending deadlines for the parties to complete discovery. The State Bar states that Plaintiff's amendment will not have any impact on the amount of damages. However, the amendment may have an impact regarding which parties are liable for the damages. The State Bar has not provided that it will be prejudiced in any other way.

***4. The Proposed Second Amended Complaint is Only Partially Futile***

"A proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Paz*, 2013 WL 6163016 at \*5.

The State Bar asserts that the amendments are futile because: (A) the individual

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

defendants have qualified immunity; and (B) Plaintiff has failed to state a claim for punitive damages.

Regarding the State Bar's assertion about qualified immunity, the Court cannot yet determine whether the individual defendants are immune. Government employees are entitled to qualified immunity "unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982)); *see also Hirsh v. Justices of Supreme Court of State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (finding that employees of the State Bar of California are state agency officials); *and Melek v. State Bar of California*, 230 F.3d 1367 (9th Cir. 2000) (holding that a state bar employee is an official who may be entitled to qualified immunity). "Determining whether a public official is entitled to qualified immunity 'requires a two-part inquiry: (1) Was the law governing the state official's conduct clearly established? (2) Under that law could a reasonable state official have believed his conduct was lawful?'" *Id.* (quoting *Browning v. Vernon*, 44 F.3d 818, 822 (9th Cir. 1995)). Without additional briefing by the parties, the Court does not have enough information or legal authority at this time to ascertain whether the individual defendants' conduct was equivalent to the conduct of "reasonable state officials."

The Court also cannot determine at this time if the individual defendants are liable for damages. Pursuant to 11 U.S.C. § 362(k)(1), "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." A stay violation is willful "if a party knew of the automatic stay, and its actions in violation of the stay were intentional." *In re Stanwyck*, 450 B.R. 181, 191-92 (Bankr. C.D. Cal. 2011) (quoting *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). On the other hand, "[a]n award of punitive damages requires 'some showing of reckless or callous disregard for the law or rights of others.'" *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014) (quoting *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989)). Again, the Court does not have enough information to make the pertinent determination at this time.

With respect to Mr. Babcock, Mr. Miller and Mr. Yee, the proposed second amended complaint does not include sufficient allegations which, if proven true, would establish a claim for violation of the automatic stay or the discharge injunction, a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

violation of 11 U.S.C. § 525 or sanctionable conduct pursuant to Federal Rule of Bankruptcy Procedure 9011 or 11 U.S.C. § 105(a). In the second amended complaint, Plaintiff alleges that Mr. Babcock, Mr. Miller and Mr. Yee "failed to implement policies and procedures to ensure that the State Bar complied with the requirements of Sections 362(a) and 524(a) of the Bankruptcy Code." Proposed Second Amended Complaint, ¶ 34. However, to show a willful violation of the stay, Plaintiff must show that these defendants "knew of the automatic stay," and that their "actions in violation of the stay were intentional." *Stanwyck*, 450 B.R. at 191-92. Plaintiff has not articulated how failing to implement policies and procedures qualifies as a willful violation of the automatic stay. Plaintiff also has not cited any authority providing that individuals in supervisory roles violate the stay if they fail to implement policies and procedures to prevent their employees from violating the automatic stay.

Other than this allegation, the allegations against Mr. Babcock, Mr. Miller and Mr. Yee are conclusive statements of liability based on their positions overseeing the Office of General Counsel. As it stands, these allegations do not satisfy Rule 8(a)(2). When a theory of vicarious liability is unavailable, "a plaintiff must plead that each [individual] defendant, through the official's own individual actions, has violated the" law. *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S.Ct. 1937, 1948, 173 L.Ed.2d 868 (2009).

For instance, in *Iqbal*, the Supreme Court held that the plaintiff had not alleged a plausible claim against Attorney General John Ashcroft and FBI Director Robert Mueller where the plaintiff alleged only that these defendants "knew of, condoned, and willfully and maliciously agreed to subject" the plaintiff to confinement "as a matter of policy...." *Id.*, at 680. These allegations "amount[ed] to nothing more than a formulaic recitation of the elements...." *Id.*, at 681 (internal quotations omitted). *See also Blantz v. California Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 927 (9th Cir. 2013) ("[C]ommon sense requires us to reject the allegation that the Chief Medical Officer for the state-wide prison system, who sits on the Governing Body, was personally involved in the decision to terminate Blantz as an independent contractor nurse at Calipatria state prison or to give her a negative job reference."). Here, the State Bar's interrogatories did not include Mr. Babcock, Mr. Miller or Mr. Yee as individuals involved with Plaintiff's involuntary inactive enrollment. Rather, Plaintiff appears to be including these parties as defendants solely on account of their roles as General Counsel or Deputy General Counsel.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Nevertheless, because the Court is requiring the State Bar to produce another witness pursuant to Rule 30(b)(6), the Court will allow Plaintiff to supplement or amend the proposed second amended complaint to include additional allegations against Mr. Babcock, Mr. Miller and Mr. Yee if Plaintiff discovers additional information about these parties at the State Bar's continued Rule 30(b)(6) deposition.

The Court also will strike the portions of the proposed second amended complaint that request relief based on the defendants' legal arguments to the Court. Proposed Second Amended Complaint [doc. 205, Exhibit A], ¶¶ 41-43, 49-51 and ¶ 3 of pp. 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not." The Court will strike these paragraphs (or portions of paragraphs) because the Court already has ruled that Plaintiff's request for punitive damages or sanctions cannot be based on the defendants' legal arguments to this Court. Ruling, pp. 12-13.

The Court previously has denied [doc. 49] a motion for sanctions filed by Plaintiff [doc. 14]. In that motion, Plaintiff requested the same relief she is requesting in the proposed second amended complaint. Plaintiff again alleges that the defendants' conduct is sanctionable pursuant to Federal Rule of Bankruptcy Procedure 9011 and 11 U.S.C. § 105(a) because the defendants argued that Plaintiff's inactive involuntary enrollment was "disciplinary." The Court already has ruled that the defendants' presentation of this argument to the Court is not sanctionable. The defendants believed Plaintiff's inactive involuntary enrollment was "disciplinary" because the State Bar is a state regulatory agency that protects the rights of others. This Court agreed.

Rather than assess the issue based on the function of the agency, the Court of Appeals looked to the nature of the underlying transaction that led to Plaintiff's involuntary inactive enrollment. *In re Scheer*, 819 F.3d 1206, 1209 (9th Cir. 2016). Looking through that lens, the Court of Appeals held that the debt owed by Plaintiff was not "a fine, penalty, or forfeiture" or "payable to and for the benefit of a governmental unit" but rather "an arbitration award for a debt between two private parties." *Id.* That the Court of Appeals ruled against the defendants does not mean that the defendants' arguments were frivolous or sanctionable. The Court of Appeals acknowledged that the Supreme Court's precedent on this issue "led to considerable confusion among federal courts and practitioners about section 523(a)(7)'s scope." *Id.*, at 1210. For this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

reason, the Court has dismissed Plaintiff's repeated requests for sanctions based on the defendants' legal argument that Plaintiff's involuntary inactive enrollment was "disciplinary." Because the Court already ruled on this issue, Plaintiff's inclusion of these allegations in the proposed second amended complaint is futile.

**III. CONCLUSION**

The Court will grant the Motion to Join and allow Plaintiff to file the proposed second amended complaint, with the following modifications: (A) Plaintiff must exclude Kenneth Bacon and Joseph Dunn from the caption; and (B) Plaintiff must delete the following paragraphs or portions of paragraphs: paragraphs 41-43, 49-51 and paragraph 3 of pages 16-17 as to the following language: "under Section 105, for their deliberate, willful and intentional actions to misrepresent [Plaintiff's] administrative suspension to the bankruptcy court as disciplinary, when it clearly was not, and they knew it was not."

As to Mr. Babcock, Mr. Miller and Mr. Yee, the Court will defer deciding on whether to strike these defendants from the amended complaint until Plaintiff deposes the State Bar's Rule 30(b)(6) witness. If Plaintiff supplements the proposed second amended complaint with additional allegations against Mr. Babcock, Mr. Miller and Mr. Yee, the Court will reassess whether Plaintiff's allegations against these parties satisfy Rule 8(a)(2).

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

- #6.00** Plaintiff's motion for order:  
(1) Requiring compliance by the State Bar with Fed. R. Bankr. Pro 7030(b)(6);  
(2) Request for sanctions against State Bar and its counsel; and  
(3) Allowing amendment to depositions topics

fr. 2/7/18

Docket 176

**Judge:**

**2/7/2018 Tentative:**

Grant in part, deny in part.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

On October 20, 2017, the State Bar produced Elizabeth Lew, an administrative assistant in the Mandatory Fee Arbitration Department as its designated Federal Rule of Civil Procedure 30(b)(6) deponent [doc. 231, Transcript of Lew's Deposition]. Plaintiff objected at the deposition to the witness because Plaintiff believed Ms. Lew was not prepared to testify to the deposition categories. Over the next few weeks, the parties exchanged communications regarding a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶¶ 7-8, 16] [doc. 190, Grandt Declaration, ¶¶ 3-7]. The parties did not reach an agreement and did not sign a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶ 16] [doc. 190, Grandt Declaration, ¶ 7].

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine to exclude certain evidence at trial (the "Motions in Limine") [doc. 213]. Finally, on January 17, 2018, the State Bar filed another protective order, requesting a global protective order to govern this adversary proceeding (the "Motion for Global Protective Order") [doc. 225].

## **II. ANALYSIS**

### ***A. The Motion to Strike***

Prior to filing a motion to compel, a party must comply with Local Bankruptcy Rule ("LBR") 7026-1(c). Under LBR 7026-1(c)—

- (1) General. Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.
- (2) Meeting of Counsel. Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.
- (3) Moving Papers. If counsel are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties.

(A) The stipulation must be contained in 1 document and must



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.

(B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

(C) In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion.

- (4) Cooperation of Counsel; Sanctions. The failure of any counsel either to cooperate in this procedure, to attend the meeting of counsel, or to provide the moving party the information necessary to prepare the stipulation required by this rule within 7 days of the meeting of counsel will result in the imposition of sanctions, including the sanctions authorized by FRBP 7037 and LBR 9011-3.

Here, it appears the parties did attempt to meet and confer in accordance with LBR 7026-1(c). Despite their meet and confer, the parties apparently could not agree to a joint stipulation. The LBRs provide that the Court will not entertain a discovery motion "[i]n the absence of [a joint stipulation] or a declaration of counsel of noncooperation..." LBR 7026-1(c)(3)(C). Here, both parties have filed declarations asserting that the other party did not cooperate. The Court will not strike Plaintiff's Motion for Deposition Compliance based on both parties' inability to agree to a joint stipulation.

***B. Plaintiff's Motion for Deposition Compliance***

Pursuant to Federal Rule of Bankruptcy Procedure 7030, "Rule 30 F.R.Civ.P. applies in adversary proceedings." According to Federal Rule of Civil Procedure ("Rule") 30 (b)(6): "[A] party may ... name as the deponent ... a ... corporation ... and describe with reasonable particularity the matters on which examination is requested.... The persons

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

so designated shall testify as to matters known or reasonably available to the organization."

"Pursuant to Rule 30(b)(6), the deponent 'must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought by [the party noticing the deposition] and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed ... as to the relevant subject matters.'" *Sony Elecs., Inc. v. Soundview Techs., Inc.*, 217 F.R.D. 104, 111–12 (D. Conn. 2002) (citing *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y. 1997)).

"Indeed, the corporation 'is expected to *create* a witness or witnesses with responsive knowledge,' and in doing so must make a good faith effort to 'find out the relevant facts—to collect information, review documents, and interview employees with personal knowledge.'" *Coryn Group II, LLC v. O.C. Seacrets, Inc.*, 265 F.R.D. 235, 238 (D. Md. 2010) (citing *Wilson v. Lakner*, 228 F.R.D. 524, 528–29 (D. Md. 2005)) (emphasis added).

If it appears at the deposition that the witness designated by the corporation is unable to answer questions on matters specified in the deposition notice, a corporate party must immediately designate a new witness. *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989). "Where a corporate deponent fails to provide an adequately prepared designee for deposition, sanctions are proper." *Coryn Group II*, 265 F.R.D. at 239.

"On the other hand, a corporation that engages in good faith efforts to prepare and whose witness provides 'substantial testimony concerning the subject areas of their designation[ ]' despite inadequate preparation may not be subject to sanctions. *Id.* at 240 (citing *Wilson*, 228 F.R.D. at 530). "Nonetheless, where 'unanswered information is significant enough, the 30(b)(6) deposition may have to be reconvened, possibly with a new witness,' at the corporation's expense." *Id.* (citing *Wilson*, 228 F.R.D. at 530).

Here, in light of the authorities above, the State Bar has not complied with its obligation to produce one or more witnesses knowledgeable about the subject matter of the noticed topics. The State Bar does not dispute the fact that Plaintiff served a Rule 30(b)(6) deposition notice describing the subject matters about which Plaintiff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

was to depose the State Bar's witness. In its opposition to Plaintiff's Motion for Deposition Compliance, the State Bar asserts that Ms. Lew was properly designated as a Rule 30(b)(6) designee and that she answered questions to the extent she could recall.

The transcript of Ms. Lew's deposition testimony [doc. 231], however, reveals gaps in Ms. Lew's knowledge as well as evasive answers regarding specific topics included in Plaintiff's Rule 30(b)(6) notice. "Although the rule is not designed to be a memory contest...", Ms. Lew should have been able to provide answers to questions that were reasonably available to the State Bar on the noticed topics. *In re Minamoto*, 12-01410, 2015 WL 5025472, at \*1 (Bankr. D. Haw. Aug. 24, 2015).

The State Bar did not meet its obligation to make a conscientious, good faith effort to produce a thoroughly educated witness about the noticed deposition topics and facts known to the State Bar or its counsel. Ms. Lew was unable to provide complete and knowledgeable answers on the subjects of examination described in the Rule 30(b)(6) deposition notice. Throughout her deposition, Ms. Lew repeatedly stated that she did not know the answers to questions posed by Plaintiff, which questions should have been anticipated because of Plaintiff's notice to the State Bar of the deposition categories. *See, e.g.* Deposition Transcript of Elizabeth Lew [doc. 231], 15:11-14, 16:10-15, 17:4-10, 18:1-10, 19: 7-14, 35:7-11, 37:24-35:1, 49:16-23, 51:22-25, 52:1-2, 54:13-21, 55:10-13.

The State Bar has objected to producing another Rule 30(b)(6) deponent because another deposition will not provide Plaintiff with information she does not already have through interrogatories and discovery documents. "Producing documents and responding to written discovery is not a substitute for providing a thoroughly educated Rule 30(b)(6) deponent." *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 541 (D. Nev. 2008). "[T]he two forms of discovery are not equivalent,... and depositions provide a more complete means to obtain information and are, therefore, favored." *Id.*

The State Bar was required to educate an appropriate Rule 30(b)(6) designee to provide knowledgeable answers reasonably available to the State Bar, which includes information ascertainable from files and documents, information from past and present employees, witness testimony and exhibits or any other sources available to the State Bar, including factual information learned through or from its counsel. *See*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

*id.* The State Bar must take steps to gain information from reasonably available sources in order to educate its future designated witness. The Court will order the State Bar to produce a fully prepared designee (or designees) capable of responding appropriately at a Rule 30(b)(6) deposition on noticed topics.

***C. Plaintiff's Request to Amend the Deposition Categories***

It is unclear which specific amendments Plaintiff wishes to make to the deposition categories related to the future deposition of the State Bar's Rule 30(b)(6) witness. To the extent Plaintiff wants to depose the State Bar's witness regarding the Advisory, the Court has already ruled that Plaintiff cannot do that. In its rulings on the First Motion to Compel and the First Motion for Protective Order, the Court explicitly ruled that the Advisory is irrelevant and that Plaintiff is not entitled to discovery regarding the Advisory. The Court will not change its ruling.

***D. Sanctions***

Because the Court is also granting the State Bar's Motion to Compel, through which the State Bar is requesting an order compelling Plaintiff to continue her deposition, the Court will not award sanctions to either party. Both parties did not meet their discovery obligations. As a result, the Court will not reward either party with an award of sanctions against the opposing party.

**III. CONCLUSION**

The Court will compel the State Bar to produce another witness to be deposed pursuant to Rule 30(b)(6). The Court will deny the Motion to Strike. The Court also will deny Plaintiff's request to amend the deposition categories and Plaintiff's request for sanctions. The parties should be ready to discuss a time and date for the State Bar's witness's continued deposition.

Plaintiff must submit an order within seven (7) days.

**Tentative Ruling:**

Grant in part, deny in part.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the State Bar's liability. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

On October 20, 2017, the State Bar produced Elizabeth Lew, an administrative assistant in the Mandatory Fee Arbitration Department as its designated Federal Rule of Civil Procedure 30(b)(6) deponent [doc. 231, Transcript of Lew's Deposition]. Plaintiff objected at the deposition to the witness because Plaintiff believed Ms. Lew was not prepared to testify to the deposition categories. Over the next few weeks, the parties exchanged communications regarding a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶¶ 7-8, 16] [doc. 190, Grandt Declaration, ¶¶ 3-7]. The parties did not reach an agreement and did not sign a joint stipulation. *See* [doc. 176, Scheer Declaration, ¶ 16] [doc. 190, Grandt Declaration, ¶ 7].

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

---

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

## II. ANALYSIS

### A. *The Motion to Strike*

Prior to filing a motion to compel, a party must comply with Local Bankruptcy Rule ("LBR") 7026-1(c). Under LBR 7026-1(c)—

- (1) General. Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.
- (2) Meeting of Counsel. Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.
- (3) Moving Papers. If counsel are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties.
  - (A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.
  - (B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

(C) In the absence of such stipulation or a declaration of counsel of noncooperation by the opposing party, the court will not consider the discovery motion.

- (4) Cooperation of Counsel; Sanctions. The failure of any counsel either to cooperate in this procedure, to attend the meeting of counsel, or to provide the moving party the information necessary to prepare the stipulation required by this rule within 7 days of the meeting of counsel will result in the imposition of sanctions, including the sanctions authorized by FRBP 7037 and LBR 9011-3.

Here, it appears the parties did attempt to meet and confer in accordance with LBR 7026-1(c). Despite their meet and confer, the parties apparently could not agree to a joint stipulation. The LBRs provide that the Court will not entertain a discovery motion "[i]n the absence of [a joint stipulation] *or a declaration of counsel of noncooperation...*" LBR 7026-1(c)(3)(C). Here, both parties have filed declarations asserting that the other party did not cooperate. The Court will not strike Plaintiff's Motion for Deposition Compliance based on both parties' inability to agree to a joint stipulation.

***B. Plaintiff's Motion for Deposition Compliance***

Pursuant to Federal Rule of Bankruptcy Procedure 7030, "Rule 30 F.R.Civ.P. applies in adversary proceedings." According to Federal Rule of Civil Procedure ("Rule") 30(b)(6): "[A] party may ... name as the deponent ... a ... corporation ... and describe with reasonable particularity the matters on which examination is requested.... The persons so designated shall testify as to matters known or reasonably available to the organization."

"Pursuant to Rule 30(b)(6), the deponent 'must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought by [the party noticing the deposition] and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed ... as to the relevant subject

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

matters.” *Sony Elecs., Inc. v. Soundview Techs., Inc.*, 217 F.R.D. 104, 111–12 (D. Conn. 2002) (citing *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y. 1997)).

"Indeed, the corporation ‘is expected to *create* a witness or witnesses with responsive knowledge,’ and in doing so must make a good faith effort to ‘find out the relevant facts—to collect information, review documents, and interview employees with personal knowledge.’” *Coryn Group II, LLC v. O.C. Seacrets, Inc.*, 265 F.R.D. 235, 238 (D. Md. 2010) (citing *Wilson v. Lakner*, 228 F.R.D. 524, 528–29 (D. Md. 2005)) (emphasis added).

If it appears at the deposition that the witness designated by the corporation is unable to answer questions on matters specified in the deposition notice, a corporate party must immediately designate a new witness. *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989). "Where a corporate deponent fails to provide an adequately prepared designee for deposition, sanctions are proper." *Coryn Group II*, 265 F.R.D. at 239.

"On the other hand, a corporation that engages in good faith efforts to prepare and whose witness provides ‘substantial testimony concerning the subject areas of their designation[ ]’ despite inadequate preparation may not be subject to sanctions. *Id.* at 240 (citing *Wilson*, 228 F.R.D. at 530). "Nonetheless, where ‘unanswered information is significant enough, the 30(b)(6) deposition may have to be reconvened, possibly with a new witness,’ at the corporation's expense." *Id.* (citing *Wilson*, 228 F.R.D. at 530).

Here, in light of the authorities above, the State Bar has not complied with its obligation to produce one or more witnesses knowledgeable about the subject matter of the noticed topics. The State Bar does not dispute the fact that Plaintiff served a Rule 30(b)(6) deposition notice describing the subject matters about which Plaintiff was to depose the State Bar’s witness. In its opposition to Plaintiff’s Motion for Deposition Compliance, the State Bar asserts that Ms. Lew was properly designated as a Rule 30(b)(6) designee and that she answered questions to the extent she could recall.

The transcript of Ms. Lew’s deposition testimony [doc. 231], however, reveals gaps in Ms. Lew’s knowledge as well as evasive answers regarding specific topics included in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Plaintiff's Rule 30(b)(6) notice. "Although the rule is not designed to be a memory contest...", Ms. Lew should have been able to provide answers to questions that were reasonably available to the State Bar on the noticed topics. *In re Minamoto*, 12-01410, 2015 WL 5025472, at \*1 (Bankr. D. Haw. Aug. 24, 2015).

The State Bar did not meet its obligation to make a conscientious, good faith effort to produce a thoroughly educated witness about the noticed deposition topics and facts known to the State Bar or its counsel. Ms. Lew was unable to provide complete and knowledgeable answers on the subjects of examination described in the Rule 30(b)(6) deposition notice. Throughout her deposition, Ms. Lew repeatedly stated that she did not know the answers to questions posed by Plaintiff, which questions should have been anticipated because of Plaintiff's notice to the State Bar of the deposition categories. *See, e.g.* Deposition Transcript of Elizabeth Lew [doc. 231], 15:11-14, 16:10-15, 17:4-10, 18:1-10, 19: 7-14, 35:7-11, 37:24-35:1, 49:16-23, 51:22-25, 52:1-2, 54:13-21, 55:10-13.

The State Bar has objected to producing another Rule 30(b)(6) deponent because another deposition will not provide Plaintiff with information she does not already have through interrogatories and discovery documents. "Producing documents and responding to written discovery is not a substitute for providing a thoroughly educated Rule 30(b)(6) deponent." *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 251 F.R.D. 534, 541 (D. Nev. 2008). "[T]he two forms of discovery are not equivalent,... and depositions provide a more complete means to obtain information and are, therefore, favored." *Id.*

The State Bar was required to educate an appropriate Rule 30(b)(6) designee to provide knowledgeable answers reasonably available to the State Bar, which includes information ascertainable from files and documents, information from past and present employees, witness testimony and exhibits or any other sources available to the State Bar, including factual information learned through or from its counsel. *See id.* The State Bar must take steps to gain information from reasonably available sources in order to educate its future designated witness. The Court will order the State Bar to produce a fully prepared designee (or designees) capable of responding appropriately at a Rule 30(b)(6) deposition on noticed topics.

***C. Plaintiff's Request to Amend the Deposition Categories***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, February 28, 2018

Hearing Room 301

1:30 PM

CONT... Marilyn S. Scheer

Chapter 7

Plaintiff requests an amendment to the deposition categories to include questions regarding the State Bar's policies and procedures in dealing with members' bankruptcy filing after receiving notice of the member's bankruptcy. Previously, the Court ruled that Plaintiff's questions regarding the Advisory were irrelevant because the State Bar had already admitted liability and the Court had ruled that the State Bar was not subject to punitive damages. As such, the only remaining issue was the extent of the State Bar's liability. As to the issue of damages, the Court ruled the Advisory was not relevant. Now, Plaintiff seeks to amend the FAC to add individual defendants who have not admitted to liability and from whom Plaintiff may attempt to obtain punitive damages. As such, if the Court allows Plaintiff to amend the FAC to add individual defendants, the State Bar's policies and procedures regarding a member's bankruptcy filing (including the Advisory) may be relevant to the issues in this proceeding. Consequently, if the Court allows Plaintiff to join the individual defendants to this action, the Court also will allow Plaintiff to amend the deposition categories to include questions regarding the Advisory and the State Bar's general policies and procedures regarding bankruptcy.

***D. Sanctions***

Because the Court also is granting the State Bar's Motion to Compel, through which the State Bar is requesting an order compelling Plaintiff to continue her deposition, the Court will not award sanctions to either party. Both parties did not meet their discovery obligations. As a result, the Court will not reward either party with an award of sanctions against the opposing party.

**III. CONCLUSION**

The Court will compel the State Bar to produce another witness to be deposed pursuant to Rule 30(b)(6). The Court will deny the Motion to Strike. The Court also will deny Plaintiff's request for sanctions.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#7.00** Defendant's motion to compel the continued deposition  
of Marilyn S. Scheer

fr. 2/7/18

Docket 185

**Judge:**

**2/7/2018 Tentative:**

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only the State Bar, Mr. Dunn and Mr. Bacon. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On December 19, 2016, Defendants filed a motion to dismiss the FAC (the "Motion to Dismiss") [doc. 96]. In the Motion to Dismiss, Defendants asserted that: (A) the FAC

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

does not include sufficient allegations as to Mr. Dunn and Mr. Bacon; (B) Mr. Dunn and Mr. Bacon are immune based on quasi-judicial immunity; (C) Plaintiff has not alleged that she suffered an injury or damages; and (D) the FAC does not make sufficient allegations regarding Plaintiff's request for punitive damages against Mr. Dunn and Mr. Bacon.

On April 19, 2017, the Court issued a ruling on the Motion to Dismiss (the "Ruling") [doc. 118]. In the Ruling, the Court dismissed Mr. Bacon on the basis that Mr. Bacon is immune, also finding that Plaintiff's reference to a State Bar's Arbitration Advisory (the "Advisory") regarding immunity was irrelevant to the Court's decision because "the Court is not bound by publications by the State Bar" and the Advisory discussed pending arbitrations, not enforcement of existing arbitration awards. The Court also dismissed Mr. Dunn on the basis that Plaintiff had not sufficiently stated a claim against Mr. Dunn. Further, the Court ruled that Plaintiff could not take discovery on issues of immunity. Finally, the Court denied the Motion to Dismiss as to the State Bar.

On May 8, 2017, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 124]. On April 26, 2017, the Court entered a scheduling order [doc. 122], setting August 30, 2017 as the deadline by which to complete discovery.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On August 4, 2017, the State Bar and Plaintiff filed a joint stipulation to extend deadlines [doc. 133]. On August 8, 2017, the Court entered an order approving the joint stipulation (the "Order Extending Deadlines") [doc. 135]. In the Order Extending Deadlines, the Court set the following dates and deadlines: (A) December 15, 2017 as the discovery cutoff date; (B) January 11, 2018 as the deadline to file pretrial motions; (C) January 31, 2018 as the deadline to file a joint pretrial

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

stipulation; and (D) February 14, 2018 as the pretrial conference date.

On July 28, 2017, Plaintiff filed a motion to compel the State Bar to provide interrogatory responses (the "First Motion to Compel") [doc. 130]. On August 21, 2017, the State Bar filed a motion for a protective order, asking the Court to strike certain deposition categories (the "First Motion for Protective Order") [doc. 140]. On September 13, 2017, the Court held a hearing on the First Motion to Compel and the First Motion for Protective Order. At that time, the Court issued rulings setting forth which deposition categories were appropriate and the interrogatories to which the State Bar had to respond [docs. 152, 153]. In both rulings, the Court held that the Advisory is irrelevant to the issues in this adversary proceeding, and that Plaintiff may not depose the State Bar regarding the Advisory or compel the State Bar to respond to interrogatories about the Advisory. On September 18, 2017, the Court entered an order granting in part and denying in part the First Motion to Compel [doc. 155]. On October 6, 2017, the Court entered an order granting in part and denying in part the First Motion for Protective Order [doc. 165].

On September 20, 2017, the parties appeared for a status conference. On September 28, 2017, in light of the parties' contentions at the status conference, the Court entered an order regarding the parties' depositions of each other and providing a deadline for the parties to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26 (the "Deposition Order") [doc. 165]. In the Deposition Order, the Court set October 10, 2017 as the date each party would depose the other. The Deposition Order provided that the Plaintiff's deposition should be first, followed by the State Bar's deposition, "which shall be continued from day to day, excluding holidays and weekends until completed."

The Deposition Order also stated that Suzanne Grandt is the only attorney allowed to conduct the deposition of Plaintiff, and that Ms. Grandt will be Plaintiff's sole contact person at the State Bar throughout the course of this litigation. The Court set a deadline of October 2, 2017 for the parties to make their initial disclosures.

On November 7, 2017, the State Bar filed a motion to extend the deadlines provided in the Order Extending Deadlines (the "State Bar's Motion to Extend") [doc. 172]. Plaintiff did not oppose the State Bar's Motion to Extend. On December 11, 2017, the State Bar voluntarily dismissed the State Bar's Motion to Extend [doc. 187]. On



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

December 14, 2017, Plaintiff filed her own motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192].

In the meanwhile, both parties filed several discovery related motions. On November 22, 2017, Plaintiff filed a motion for an order requiring the State Bar to comply with Federal Rule of Civil Procedure 30(b)(6) by designating a knowledgeable person and allowing an amendment to Plaintiff's deposition topics ("Plaintiff's Motion for Deposition Compliance") [doc. 176]. Plaintiff is asking the Court to order the State bar to produce a knowledgeable witness. On December 14, 2017, the State Bar filed a motion to strike Plaintiff's Motion for Deposition Compliance (the "Motion to Strike") [doc. 189], asking the Court to strike Plaintiff's Motion for Deposition Compliance on the basis that Plaintiff did not enter into a joint stipulation with the State Bar in accordance with Local Bankruptcy Rule 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice, Marilyn Scheer Law Group PC ("MSLG"). On December 15, 2017, Plaintiff filed a motion for a protective order (the "Motion for Deposition Order") [doc. 194], asking the Court to prohibit the State Bar from questioning Plaintiff about MSLG. On January 23, 2018, Plaintiff filed an opposition to the State Bar's Motion to Compel (the "Opposition to the State Bar's Motion to Compel") [doc. 236]. On January 24, 2018, the State Bar filed an opposition to the Motion for Deposition Order (the "Opposition to the Motion for Deposition Order") [doc. 237].

On December 27, 2017, Plaintiff filed a motion for leave to join additional defendants to this action (the "Motion to Join") [doc. 205]. On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns (the "Motion for Records Order") [doc. 209].

On January 11, 2018, the State Bar filed seven motions in limine to exclude certain evidence at trial (the "Motions in Limine") [doc. 213]. Finally, on January 17, 2018, the State Bar filed another protective order, requesting a global protective order to govern this adversary proceeding (the "Motion for Global Protective Order") [doc. 225].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer  
II. ANALYSIS**

**Chapter 7**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

"Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992) (citing *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986)). Rather, "[t]he party opposing disclosure has the burden of proving 'good cause,' which requires a showing 'that specific prejudice or harm will result' if the protective order is not granted." *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir.2003)).

Here, the State Bar's inquiries regarding MSLG are highly relevant to Plaintiff's request for damages based on lost wages and emotional distress. As to Plaintiff's claim for lost wages, Plaintiff asserts she is willing to stipulate that she made no money from MSLG. However, Plaintiff refused to answer other questions regarding MSLG, such as why Plaintiff was winding down MSLG and what kind of work she was doing for MSLG. These questions are also relevant to Plaintiff's claim of lost wages because Plaintiff is asserting, had it not been for the State Bar placing her on involuntary inactive enrollment, Plaintiff would have been hired by other law firms. Plaintiff's experience at MSLG is relevant to the type of firm and/or practice for which Plaintiff would qualify.

In addition, although Plaintiff briefly mentions that certain information is privileged, Plaintiff has not specified what kind of privileged information the State Bar sought. It does not appear that the State Bar has asked for Plaintiff's work product or attorney-client communications.

Moreover, the information about Plaintiff's state of mind at the time she was winding down her firm is also relevant to Plaintiff's emotional distress damages. If Plaintiff is to argue that the State Bar's refusal to lift Plaintiff's involuntary inactive enrollment caused her emotional distress, the State Bar is entitled to obtain discovery that may show other factors caused Plaintiff's emotional distress.

In light of the above, all of the information sought by the State Bar is relevant. The next issue is whether there is "good cause" to protect Plaintiff from "annoyance, embarrassment, oppression, or undue burden or expense...." Rule 26(c)(1). At this time, it does not appear the State Bar has asked inappropriate questions that would

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

result in annoyance, embarrassment or oppression. Plaintiff has refused to answer relevant questions regarding MSLG, which questions go at the heart of the remaining issue in this adversary proceeding, namely, damages. As such, there is no good cause to enter a protective order.

**III. CONCLUSION**

The Court will grant the State Bar's Motion to Compel and deny the Motion for Deposition Order. The parties should be ready to discuss a time and date for the Plaintiff's continued deposition.

The State Bar must submit an order within seven (7) days.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, February 28, 2018**

**Hearing Room 301**

2:30 PM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

- #8.00** Trustee's Motion for an Order:
- (1) Approving sale of assets free and clear of all liens, claims and interests
  - (2) Waiving the 14-day stay period set forth in bankruptcy rule 6004(h)
  - (3) Granting related relief

Docket 238

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 01, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#1.00 Debtor's emergency motion to authorize use of cash collateral**

Docket 20

**Tentative Ruling:**

The hearing is continued to 2:00 p.m. on March 8, 2018.

Appearances on March 1, 2018 are excused.

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

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:17-11503 RALPH L FERGUSON

Chapter 7

#1.00 Motion for relief from stay [AN]  
Quinones vs Debtor YC070792

THERESA QUINONES  
VS  
DEBTOR

fr. 10/4/17(stip); 12/6/17(stip)

Docket 33

\*\*\* VACATED \*\*\* REASON: Notice of dismissal of motion filed 3/2/18.

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

RALPH L FERGUSON

Represented By  
Suresh C Pathak

**Movant(s):**

Theresa Quinones

Represented By  
Andrew P Altholz

**Trustee(s):**

David Seror (TR)

Represented By  
Nancy H Zamora



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:15-12605 Aurora Elizabeth Abraham

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK, N.A.  
VS  
DEBTOR

fr. 1/17/18

**Order re voluntary dismissal entered 2/28/18**

Docket 49

\*\*\* VACATED \*\*\* REASON: Case dismissed on 2/28/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Aurora Elizabeth Abraham

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

fr. 1/24/18

Docket 47

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:17-10796 Eloy Medina, Jr.

Chapter 13

#4.00 Motion for relief from stay [RP]

SETERUS, INC.  
VS  
DEBTOR

fr. 1/24/18

Docket 34

\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
2/15/2018

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Eloy Medina Jr.

Represented By  
Joshua L Sternberg

**Movant(s):**

Seterus, Inc. as the authorized

Represented By  
Nichole Glowin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:17-13385 Philip Joseph Knight

Chapter 7

#5.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Philip Joseph Knight

Represented By  
Gregory M Shanfeld

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Sheryl K Ith

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:17-11495 Steven Nia

Chapter 7

#6.00 Motion for relief from stay [RP]

PROF-2013-S3 LEGAL TITLE TRUST BY U.S. BANK NA  
VS  
DEBTOR

Docket 106

**Tentative Ruling:**

Grant relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2). If movant wishes to pursue relief from the automatic stay under § 362(d)(4), the Court will set an evidentiary hearing on that issue.

**I. BACKGROUND**

Movant is the beneficiary of a trust deed encumbering the real property at issue, located at 17977 Medley Drive, Encino, CA 91316-4377 (the "Property"). As of the filing of its motion, movant held a secured claim in the amount of \$1,560,944.20. Movant also is the holder of a promissory note endorsed in blank as to the Property.

Steven Nia (the "Debtor") is the identified borrower on movant's deed of trust and promissory note. In his schedules, the Debtor stated that the value of the Property is \$1,400,000. The Debtor also listed approximately \$2,499,607 in claims secured by the Property.

On January 30, 2015, movant recorded a notice of default as to the Property. (Real Property Declaration, ¶ 9a.) On December 7, 2016, movant recorded a notice of sale as to the Property. (*Id.*, ¶ 9b.) A foreclosure sale was scheduled for January 9, 2017 and for January 9, 2018. (*Id.*, ¶¶ 9c, d.)

On September 9, 2015, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Edmundo Cornejo. On September 10, 2015, Edmundo Cornejo filed case no. 2:15-bk-24078-VZ. On September 29, 2015, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 5.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

On October 7, 2015, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Victor Hugo Roman. On October 8, 2015, Victor Hugo Roman filed case no. 2:15-bk-25528-WB. On October 27, 2015, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 6.)

On November 8, 2015, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Angela Malone. On November 30, 2015, Angela Malone filed case no. 2:15-bk-27171-NB. On November 30, 2015, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 7.)

On February 29, 2016, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Griselda Vega De Guevara. On March 1, 2016, Griselda Vega De Guevara filed case no. 6:16-bk-11808-MJ. On March 21, 2016, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 8.)

On April 28, 2016, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Florencio Burquez. On April 29, 2016, Florencio Burquez filed case no. 1:16-bk-11302-MB. On May 17, 2016, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 9.)

On June 29, 2016, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Mi Kyung Hur. On June 30, 2016, Mi Kyung Hur filed case no. 2:16-bk-18732-NB. On July 18, 2016, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 10.)

On January 5, 2017, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Rachel Malone. On January 6, 2017, Rachel Malone filed case no. 2:17-bk-10225-SK. On January 24, 2017, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 11.)

On February 6, 2017, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Miguel A. Lopez. On February 7, 2017, Miguel A. Lopez filed case no. 2:17-bk-11446-WB. On March 21, 2017, this case was dismissed for failure to appear at the § 341(a) meeting of creditors. (Exh. 12.)

On May 7, 2017, the Debtor allegedly executed a grant deed, purporting to grant a 5% interest in the Property to Rabin Arrehbori. On May 11, 2017, Rabin Arrehbori filed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

case no. 2:17-bk-15845-WB. On May 30, 2017, this case was dismissed for failure to schedules, statements, and/or plan. (Exh. 13.)

On June 4, 2017, the Debtor filed a chapter 11 petition, commencing this case. On July 24, 2017, this case was converted from chapter 11 to chapter 7. David K. Gottlieb (the “Trustee”) was appointed chapter 7 trustee.

On February 12, 2018, movant filed the pending motion for relief from the automatic stay as to the Property, seeking relief pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4) (the “Motion”) [doc. 106]. As of the date of the Motion, the Trustee had not filed a notice of abandonment of the Property. The Trustee has not opposed or otherwise responded to the Motion.

On February 21, 2018, the Debtor filed his opposition to the Motion (the “Opposition”) [doc. 108]. In the Opposition, the Debtor states that the grant deeds at issue were never recorded. The grant deeds were all notarized by the same notary, whose commission appears to have expired. The Debtor denies signing any of the grant deeds. The Debtor also states that he and movant previously had entered into a short sale to a purchaser for \$1.1 million, but that this sale did not close. The Debtor further states that he would like to effectuate a short sale of the Property.

## **II. DISCUSSION**

11 U.S.C. § 362(d)(1) provides for relief from the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest[.]”

11 U.S.C. § 362(d)(2) provides for relief from the automatic stay “with respect to a stay of an act against property under subsection (a) of this section, if . . . (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization[.]”

11 U.S.C. § 362(d)(4) provides for relief from the automatic stay:

with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Relief from the automatic stay appears warranted under § 362(d)(1). There appears to be an insufficient equity cushion as to movant's interest in the Property. The Debtor's schedules identify approximately \$2,499,606.96 in claims secured by the Property, which has a scheduled value of \$1,400,000. In the Opposition, the Debtor alleges that the value of the Property is \$1,100,000, less than the amount stated in his schedules. In the motion, movant asserts a claim in the total amount of \$1,560,944.20, which exceeds both the scheduled value of the Property and the Debtor's latest opinion of value.

Relief from the automatic stay appears warranted under § 362(d)(2). As noted above, there appears to be no equity in the Property. In addition, because this is a chapter 7 case, the Property is not necessary to an effective reorganization.

Regarding relief under § 362(d)(4), at this time the Court will not conclude that the Debtor's filing of the petition in this case was part of a scheme to delay, hinder, or defraud creditors. In the Opposition, the Debtor alleges that he did not sign the grant deeds purporting to transfer fractional interests in the Property to the various transferees. Movant has not responded to these allegations. If Movant wishes to



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

obtain relief under § 362(d)(4), the Court will set an evidentiary hearing on this issue.

Regarding the Debtor's pursuit of a short sale, the Debtor's case was converted to chapter 7. As noted above, the Trustee has not abandoned the Property, and the Property remains property of the bankruptcy estate. Therefore, as of now, the Debtor does not have the ability to sell the Property.

**III. CONCLUSION**

In light of the foregoing, the Court will grant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Steven Nia

Represented By  
Raymond H. Aver  
Steven R Fox

**Movant(s):**

Prof-2013-S3 Legal Title Trust, By

Represented By  
Darlene C Vigil

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

Lovee D Sarenas

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 51

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Movant(s):**

U.S. Bank Trust National

Represented By  
Robert P Zahradka

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#8.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTRO

Docket 45

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:17-11588 Christopher Ivo Joseph Silveira

Chapter 13

#9.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 21

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Christopher Ivo Joseph Silveira

Represented By  
William G Cort

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

1:18-10345 Erika Krayndler

Chapter 13

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

Docket 13

\*\*\* VACATED \*\*\* REASON: Order of Voluntary Dismissal entered  
3/6/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Erika Krayndler

Represented By  
Walter Scott

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

9:30 AM

**1:18-10369 Jaime Gutierrez**

**Chapter 13**

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

Docket 10

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#12.00** Status conference re: complaint to determine nondischargeability of debt (11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B))

Docket 1

**Tentative Ruling:**

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on May 9, 2018.**

It appears that the plaintiff has not requested entry of default under Local Bankruptcy Rule 7055-1(a). The plaintiff must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **April 13, 2018.**

If plaintiff will be seeking to recover attorneys' fees, plaintiff must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

Plaintiff's appearance on March 7, 2018 is excused.

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

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Grigor Chilingaryan**

Richard W Snyder

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#13.00** Status conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

Docket 1

**Tentative Ruling:**

Parties should also be prepared to discuss the following:

Deadline to complete discovery: 5/31/18.

Deadline to file pretrial motions: 6/29/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 7/25/18.

Pretrial: 1:30 p.m. at 8/7/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#14.00** Defendant, Earnest Charles Barreca's motion to exclude plaintiffs' evidence

Docket 155

**Tentative Ruling:**

The Court will continue this hearing to 2:30 p.m. on March 14, 2018.

Appearances on March 7, 2018 are excused.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#15.00** Status conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18

Docket 12

**Tentative Ruling:**

The Court will continue this pretrial conference to 2:30 p.m. on March 14, 2018.

Appearances on March 7, 2018 are excused.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#16.00** Defendants Yegiya Kutyan and Haykush Helen Kutyans  
motion to dismiss the adversary complaint with prejudice

Docket 10

**Tentative Ruling:**

Grant as to the § 523(a) causes of action, with leave to amend the claim of defalcation under § 523(a)(4), and deny in part and grant in part as to the § 727(a)(4)(A) cause of action.

**I. BACKGROUND**

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Defendants") filed a voluntary chapter 11 petition.

On November 27, 2017, Pogo Araik Melkonian ("Plaintiff") filed a complaint against Defendants (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A). Through the Complaint, Plaintiff makes a number of allegations regarding Defendants' misconduct. The central thrust of these allegations is that Defendants were co-conspirators with George Pilavjian ("Pilavjian") and Sona Chukhyan ("Chukhyan") (Pilavjian and Chukhyan together, "Criminals") in a scheme to induce loans fraudulently from Plaintiff and others.

According to Plaintiff, between June 2008 and August 2008, Defendants solicited him for multiple loans for their real estate investment business. The Defendants repaid the loans Plaintiff made during that period on time and with profit. Between September 2008 and March 2009, Defendants solicited further loans from Plaintiff in the amounts of \$165,000, \$260,000, \$100,000 and \$55,000, respectively, for the alleged purpose of purchasing properties. On December 6, 2008, Defendant Haykush made interest-only payments to Plaintiff in the amount of \$9,000 and \$5,000 (Complaint, Exh. 1).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Yegiya Kutyan**

**Chapter 11**

On January 16, 2009, JBA Company, LLC ("JBA"), a company owned and operated by Pilavjian, made a partial repayment on the loans in the amount of \$160,000 (Complaint, Exh. 2). Plaintiff's bank rejected the check for insufficient funds. Plaintiff contacted Defendant Yegiya who told him to redeposit the check. Plaintiff's son redeposited the check on two different occasions and both times it was returned for insufficient funds. On June 25, 2010, Plaintiff discovered the account from which the check was drawn had been closed.

Plaintiff alleges that in oral conversations with Plaintiff about the dishonored check, Defendants represented to Plaintiff that there was a mistake and that his money was secure. Defendants promised to execute and deliver a promissory note evidencing the debt owed to Plaintiff by Defendants. Plaintiff alleges that Defendants made similar assurances that his loan was secure and safe and would be repaid with interest throughout the period from when the loans were made to approximately June 2010.

On July 30, 2009, Defendants allegedly organized a meeting where Defendant Yegiya, Criminals, Plaintiff and his son were present. Chukhyan presented a portfolio of real estate properties that they represented were on the market. Defendant Yegiya and Criminals represented to Plaintiff that when a property sold, Plaintiff would be repaid.

On September 3, 2009, Plavjian executed a "Note Secured by Deed of Trust" wherein he promised to pay Plaintiff's son \$600,000 with 6.5% interest by September 3, 2011 (Complaint, Exh. 3). On December 23, 2009, Plavjian, on behalf of JBA and allegedly at Defendant Yegiya's direction, executed a second note secured by a deed of trust promising to pay Plaintiff's son \$600,000 by December 23, 2010 (Complaint, Exh. 4). On May 14, 2010, Defendant Yegiya executed a promissory note promising to pay Plaintiff \$600,000, but which did not specify a due date (Complaint, Exh. 5-6).

On June 5, 2010, Plaintiff contends that Defendants invited Plaintiff to their home to discuss repayment of Plaintiff's loans. On June 7, 2010, Defendants filed a civil harassment restraining order against Plaintiff.

Plaintiff alleges that he was not aware that Defendants and Criminals had defrauded him until October 17, 2013. Plaintiff contends that he became aware through the local news that Chukhyan had been arrested and charged for felony fraud charges for operating a Ponzi scheme in which Plavjian and JBA were identified as co-schemers.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

Plaintiff argues that he could not have discovered the fraud and deceit earlier.

On May 15, 2014, Plaintiff filed a suit against Defendants, Criminals and JBA in the Los Angeles County Superior Court. The state court has not entered a judgment in that action.

On August 21, 2017, Defendants filed a chapter 11 petition. Through the Complaint, Plaintiff argues that the Defendants made the following materially false statements in the petition: (1) failing to identify themselves as "small business debtors" and failing to attach the required documentation; (2) stating false values for their electronics, jewelry and ownerships interests in their businesses; (3) stating a false monthly income for their businesses; (4) stating false expenses for their mortgage, utilities and health insurance; and (5) stating that JP Morgan Chase Bank's claim is "unliquidated," "contingent" and "disputed" when it is not.

On January 3, 2018, Defendants filed the Motion to Dismiss the Adversary Complaint with Prejudice (the "Motion") [doc. 10]. Defendants argue first that Plaintiff's claims under 11 U.S.C. § 523 are barred by the California statute of limitations for actions alleging fraud. Because Plaintiff could have discovered his injury through reasonable diligence in 2010, filing his action in 2014 was not within California's three year statute of limitations. Defendants also argue that the causes of action under § 523 should be dismissed because the Plaintiff has not alleged specific facts beyond legal conclusions in their support.

As for the 11 U.S.C. § 727(a)(4) cause of action, Defendants argue that Plaintiff has failed to allege that Defendants knew any of the information was inflated or false and that they had any intention of deceiving their creditors.

On February 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 15]. In the Opposition, among other things, Plaintiff presents a series of new facts, including that Defendants had agents deliver checks to Plaintiffs [doc. 15, p. 8, lines 10-16] and elaborating on facts stated in the Complaint [doc. 15, p. 10, lines 2-3, 6-15].

**II. DISCUSSION**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**  
*Federal Rule of Civil Procedure 12(b)(6)*

Chapter 11

Defendants argue that all four causes of action in the complaint should be dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6).

Courts grant motions to dismiss under FRCP 12(b)(6) where the Complaint fails to state enough factual content to allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). In addition, courts do not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Id.* When ruling on a Rule 12(b)(6) motion, the court  cannot consider "new" facts alleged in a plaintiff's opposition papers. *See Schneider v. California Dept. of Corrections*, 151 F.3d 1194, 1197 (9th Cir. 1998).

Pursuant to FRCP 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Where a complaint is insufficient under FRCP 12(b)(6), a court has discretion to grant the plaintiff leave to amend. Under FRCP 15(a)(2) "the court should freely give leave [to amend] when justice so requires." However, dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

**11 U.S.C. § 523(a)(2)(6)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor’s or an insider’s financial condition."

To prevail on a § 523(a)(2)(A) claim, the Plaintiff must prove by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor’s statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor’s statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Representations made without an intent to perform satisfy the first three requirements of a claim under § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise can also be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have intent to perform at the time he made the representation. *Matter of Bercier*, 934 F.2d 689, 691-92 (5th Cir. 1991) ("A mere promise to be executed in the future is not sufficient to make a debt nondischargeable, even though there is no excuse for the subsequent breach.") (citations omitted).

***Statute of Limitations***

A party seeking to have its debt declared nondischargeable must first establish that debt under the applicable state statute of limitations. *In re DiBenedetto*, 560 B.R. 531, 537 (Bankr. C.D. Cal. 2016). Under California law, "[a]n action for relief on the grounds of fraud or mistake must be commenced within three years." *Kline v. Turner*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

**Chapter 11**

87 Cal. App. 4th 1369, 1373 (2001). "However, such action is not deemed accrued 'until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.'" *Id.* at 1374 (quoting Cal. Code Civ. Proc., § 338, subd. (d)). "The courts interpret discovery in this context to mean not when the plaintiff became aware of the specific wrong alleged, but when the plaintiff suspected or should have suspected that an injury was caused by wrongdoing." *Kline*, 87 Cal. App. 4th at 1374. "The statute of limitations begins to run when the plaintiff has information which would put a reasonable person on inquiry." *Id.*

A complaint that shows on its face facts suggesting that it is barred must "specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." *E-Fab, Inc. v. Accountants, Inc. Servs.*, 153 Cal. App. 4th 1308, 1319 (2007).

Plaintiff asserts that Defendants' constant reassurances and their personal friendship with him (*e.g.* inviting him to family gatherings) led Plaintiff to trust Defendants, and not discover their fraud until years later. However, the Complaint contains facts indicating that Plaintiff was on inquiry notice in 2010. The Complaint alleges that in January 2009 Plavjian issued a \$160,000 check to Plaintiff which was rejected twice and which Plaintiff discovered was from a closed account in June 2010 [doc. 1, ¶ 18]. Also in June 2010, Defendants filed for a civil harassment restraining order against Plaintiff in order to prevent Plaintiff from contacting Defendants [doc. 1, ¶29]. In December 2010, payments on Plavjian's note came due, and Plaintiff was not paid [doc. 1, ¶22].

A reasonable person could not ignore the events detailed in the Complaint, even with Defendants' oral reassurances and former personal friendship. Plaintiff alleges that he took numerous steps throughout 2010 to recover some of his loans, and Defendants and Criminals responded with evasion. This conduct would, at the very least, raise a reasonable person's suspicion that he would not be paid back. Even if the statute did not start running until Plavjian's note came due in December 2010, the May 15, 2014 state court complaint was filed beyond the California statute of limitations. Plaintiff has not provided any plausible explanation as to why he took no action while his sizeable loans were outstanding for three years.

Because he was on inquiry notice of his injury in 2010, Plaintiff cannot show that he

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

filed his May 2014 state court action within the California statute of limitations. Accordingly the 11 U.S.C. § 523(a)(2) and (a)(6) causes of action, which are based on fraud, are time barred. The Court will grant the Motion as to those causes of action.

***11 U.S.C. § 523(a)(4)***

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit Court of Appeals has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at fn. 7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

The Complaint does not include sufficient allegations to state a cause of action under § 523(a)(4). Under the authorities above, Plaintiff did not allege a fiduciary relationship as defined under § 523(a)(4). The fiduciary relationship must arise from an express or technical trust. Plaintiff's arguments in the Opposition that a trust relationship arose when Defendants befriended and solicited loans from him are inapposite, because these allegations do not show the existence of an express or technical trust. In addition, Plaintiff consistently refers to his interactions with Defendants as loans. A loan, without more, does not create a fiduciary relationship. *See In re Mbunda*, 484 B.R. 344 (B.A.P. 9th Cir. 2012).

Further, Plaintiff fails to allege larceny or embezzlement as defined under § 523(a)(4). "Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004).

Plaintiff fails to allege sufficient facts to show embezzlement because he does not allege that Defendants misappropriated the loans to a use other than that of buying real property. Similarly, Plaintiff fails to allege that Defendants came into possession of the money wrongfully, so a claim of larceny is inappropriate. Plaintiff admits he loaned the money the Defendants.

As discussed above, to the extent that Plaintiff presents any cause of action based on fraud, that cause of action is time barred. However, Plaintiff may have knowledge of facts tending to support a claim of defalcation in a fiduciary capacity under § 523(a)(4). Accordingly, the Court will grant leave to amend with respect to Plaintiff's § 523

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

Chapter 11

(a)(4) claim, in the context of defalcation in a fiduciary capacity.

***11 U.S.C. § 523(a)(6)***

Plaintiff also fails to include sufficient allegations to state a claim under 11 U.S.C. § 523(a)(6). Section 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." Under FRCP 9(b), "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

A simple breach of contract is not the type of injury intended to be covered by § 523(a)(6). *In re Jercich*, 238 F.3d 1202, 1205 (9th Cir. 2001); *In re Riso*, 978 F.2d 1151, 1154 (9th Cir. 1992); *see also Lockerby v. Sierra*, 535 F.3d 1038, 1041 (9th Cir. 2008) (breach of contract not "willful and malicious" under § 523(a)(6) unless accompanied by conduct that constitutes a tort under state law).

Defendants' mere failure to pay back Plaintiff's loans is not sufficient to support a claim under § 523(a)(6). Thus, Plaintiff must assert a claim under § 523(a)(6) based on Defendants' allegedly fraudulent conduct. As discussed above, Plaintiff's claims based on fraud are barred by the California statute of limitations.

***11 U.S.C. § 727(a)(4)***

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (9th Cir. B.A.P. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

disposition of the debtor's property." *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1198 (9th Cir. 2010)(quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *In re Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show 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 creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*In re Roberts*, 331 B.R. 876, 884 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil v. Developers Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 174 (B.A.P. 9th Cir. 2007) (circumstances might include multiple omissions or failure to clear up omissions), *aff'd*, 578 F.3d 1167. "(T)he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727 (a)(4). *Stamat v. Neary*, 635 F3d 974, 982 (7th Cir. 2011).

Plaintiff alleges that Defendants knowingly and fraudulently failed to indicate that they are "small business debtors" as defined in 11 U.S.C. § 101(51D). Pursuant to § 101(51D)—

The term "small business debtor"--  
(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$2,566,050 (excluding debts owed to 1 or more affiliates or



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$2,566,0501 (excluding debt owed to 1 or more affiliates or insiders).

The small business debtor designation is not an election. If a debtor qualifies § 101 (51D), the debtor must indicate that on their petition. *See In re Roots Rents, Inc.*, 420 B.R. 28, 35 (Bankr. D. Idaho 2009). The small business debtor designation requires a debtor to provide extra disclosures in a case and changes certain case deadlines. Regarding those disclosures, in the Central District of California, the United States Trustee requires that all debtors provide substantially the same disclosures in a "seven day package." Here, Defendants also have provided such information in their disclosure statement.

Assuming that Defendants' case qualifies as a small business case, because Defendants were required to provide similar disclosures regardless of a small business debtor designation, it is unlikely that Defendants had the requisite fraudulent intent. However, given Plaintiff's other allegations regarding misstatements in the petition, the Court will not make that determination for purposes of the Motion.

The Complaint also alleges that Defendants misstated values for their electronics and jewelry. Defendants argue that any misstatement of the value of these items is not material because they are exempt under California Code of Civil Procedure §§ 704.020 and 704.040. Pursuant to California Code of Civil Procedure § 704.020 household furnishings and other personal effects are exempt if they are "ordinarily and reasonably necessary to and personally used or procured by the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence." An item is not ordinarily and reasonably necessary if the item has "extraordinary value as compared to the value of items of the same type found in other households." Cal. Code Civ. Proc. § 704.020. Under California Code of Civil Procedure § 704.040, jewelry, heirlooms, and works of art are exempt to the extent

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

that the aggregate equity therein does not exceed \$8,000. Cal. Code Civ. Proc. §§ 704.020 and 703.150.

Of Defendants' electronics, the Complaint states:

Defendants state that they own a [sic] "iPhone 6; iPhone 7; Macbook Air; iPad; 6 televisions; DVD player" with a total value of \$700. Plaintiff is informed and believes, and on that basis alleges, that Defendants have purposefully understated the value of their electronics.

[doc. 1, p. 10]. A misstatement of the values of these items is only material to Defendants' bankruptcy case if these items have extraordinary values as compared to other households. Plaintiff has not asserted why he thinks the electronics are of extraordinary value. Consequently, the Complaint does not provide enough factual content to draw the reasonable inference that Defendants are liable for the misconduct alleged.

Of Defendants' jewelry, the Complaint states:

Defendants state they own a [sic] "2 wedding bands and 1 engagement ring" with a total value of "\$1,000." Plaintiff is informed and believes, and on that basis alleges, that Defendants have purposefully understated the value of their jewelry and have failed to disclose additional jewelry that they own."

[doc. 1, p. 10]. A misstatement of the value of the jewelry that Defendants own is only material to the Defendants' bankruptcy case if the aggregate value of these items exceeds \$8,000. Plaintiff has not alleged any reason aside from that he believes the Defendants own jewelry with an aggregate value in excess of that amount. Again, the Complaint does not provide enough factual content to draw the reasonable inference that Defendants' representations concerning their jewelry constitute material omissions under § 727(a)(4)(A).

Plaintiff additionally alleges that Defendants made false statements regarding the amount of their expenses for their mortgage, utilities and health insurance. The amounts of these expenses are material because they are used to calculate Defendants' disposable income. *See In re Song*, No. ADV RS 08-01291-MJ, 2011 WL 6934462, at

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

\*7 (B.A.P. 9th Cir. Sept. 30, 2011).

Plaintiff states that Defendants' Schedule J lists "inflated" figures of \$550 for utilities and \$966 for health insurance. Plaintiff does not explain why he believes that these expenses are inflated figures. Plaintiff has not presented sufficient factual allegations to base a § 727(a)(4)(A) claim on these alleged misstatements.

Plaintiff further asserts that Defendants have grossly undervalued their business assets and understated the monthly income for their business. Plaintiff points to the Defendants' Statement of Financial Affairs, which states much higher yearly gross income for the businesses in 2015 and 2016 than the monthly income the Defendants reported on their Schedule I. In light of the prior yearly income, the current value of Defendants' businesses may be higher than Defendants allege. Disclosures concerning the value of Defendants' businesses are material because they may be significant assets of the estate.

The question before the Court is whether the Complaint included sufficient facts, if taken as true, to support a cause of action under §727(a)(4)(A). Under the Rule 12(b)(6) standard, the Court takes these allegations as true. Because Plaintiff has provided sufficient factual allegations to state a claim under § 727(a)(4)(A) about the valuation of Defendants' businesses, the Court will deny the Motion as to that claim. However, as to Plaintiff's allegations regarding Defendants' Schedule J expenses, current business income, electronics and jewelry, the Court will grant the Motion, with leave to amend.

### **III. CONCLUSION**

The Court will grant the Motion, without leave to amend, as to Plaintiff's causes of action under § 523(a)(2) and (a)(6). The Court will grant with leave to amend as to Plaintiff's cause of action for defalcation under § 523(a)(4).

The Court will deny the Motion as to Plaintiff's allegations regarding the valuation of Defendants' businesses under § 727(a)(4)(A), but will grant with leave to amend regarding Defendants' allegedly false oaths concerning their Schedule J expenses, current business income, electronics and jewelry.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 07, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

Defendants should submit the order within seven (7) days. Plaintiff must file and serve any amended complaint within 14 days following the entry of the order.

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

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 07, 2018

Hearing Room 301

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#17.00** Status conference re: complaint for non-dischargeability of debt under section 523(a) for:  
(1) false pretenses, false representation and fraud [§523(a)(2)];  
(2) fraud or defalcation while acting in a fiduciary capacity [§523(a)(4)];  
(3) willful and malicious injury [§523(a)(6).  
denial of discharge for false oaths in bankruptcy documents  
[11 U.S.C. § 727(a)(4)(A)]

fr. 1/24/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Pro Se

Haykush Helen Kutyan

Pro Se

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**1:16-13118 Gloria Angelica Garcia**

**Chapter 11**

**#1.00** Application for payment of final fees and/or expenses  
for A.O.E. Law and Associates, APC attorney for debtor

Docket 124

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(J), the applicant has not filed a declaration from the debtor indicating that the debtor has reviewed the fee application and has no objection to it.

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

**Debtor(s):**

Gloria Angelica Garcia

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Kevin Tang  
Edith Walters  
Clarissa D Cu

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#2.00** First interim application for compensation and reimbursement of expenses of Michael Jay Berger

fr. 2/8/18

Docket 89

**Tentative Ruling:**

The Court will continue the hearing to **September 6, 2018 at 10:30 a.m.**

***The Motion to Dismiss or Convert***

On October 20, 2017, the United States Trustee (the "UST") filed a motion to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b) (the "Motion to Dismiss or Convert") [doc. 51]. On January 17, 2018, AAA Nursing Services Inc. (the "Debtor") filed its November 2017 MOR [doc. 93]. The Debtor reported no expenses paid for November 2017. (Doc. 93, Exh. D.)

On January 25, 2018, the UST filed a *Supplement to Motion to Dismiss or Convert Case* (the "Supplement") [doc. 96]. In the Supplement, the UST stated that the Debtor did not timely file a December 2017 MOR. The Debtor did not provide a "list of unpaid bills" in its November 2017 MOR, and the UST did not waive this requirement. The Debtor has 36 employees and reported that it did not pay any expenses in November 2017. (Declaration of Russell Clementson, doc. 96, ¶¶ 3–4; Exh. 1.) As a result of the failure to timely file MORs, the UST was not able to evaluate the Debtor's financial condition. The UST requested conversion of the Debtor's case, or, in the alternative, the appointment of a chapter 11 trustee.

On February 5, 2018, the patient care ombudsman (the "Ombudsman") appointed in the Debtor's case filed a *Revised Professional Fee Statement* [doc. 97], indicating that a check tendered by the Debtor to the Ombudsman in the amount of \$3,335 was returned unpaid. On February 21, 2018, the Court entered an order granting the Motion to Dismiss or Convert and converting the Debtor's case to chapter 7 [doc. 105].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**CONT... AAA Nursing Services Inc.  
*The Pending Fee Application***

**Chapter 11**

On January 16, 2018, applicant filed its first interim application for compensation and reimbursement of expenses (the "Application") [doc. 89]. On February 15, 2018, the Court entered an order granting the Application in part and authorizing applicant to draw down on its prepetition retainer in partial payment of its fees and expenses, in the amount of \$12,449.41 [doc. 101]. The Court also instructed applicant to file a declaration regarding the Debtor's ability to pay the remaining balance of applicant's fees and expenses. The Court continued the hearing to March 8, 2018.

As of March 7, 2018, the applicant has not filed such a declaration. In light of the conversion of the Debtor's case to chapter 7 and the Debtor's present financial condition, the Court will not rule on the balance of applicant's requested fees at this time.

Appearances on March 8, 2018 are excused.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#2.10** Application for interim fees and/or expenses by Giovanni Orantes, debtor's attorney

from: 2/22/18

Docket 230

**Tentative Ruling:**

The Orantes Law Firm, P.C. ("Applicant"), counsel for the debtor – approve fees of \$71,270.50 and reimbursement of expenses of \$6,342.53, on an interim basis. In light of the cash currently available in the estate, Applicant may collect 60% of the approved fees and 100% of the approved expenses at this time. The Court has not approved \$10,497.50 in fees and \$61.93 in expenses for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In light of the foregoing, the Court will not approve the following fees because they

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Gonzalez Villapando**

**Chapter 11**

appear to be duplicate time entries for appearances on the same day:

Category	Date	Description	Time	Fee	Reason
Relief from Stay	7/27/17	Appear at Hearing on Stipulation re Cash Collateral	0.5	\$250.00	Duplicative of entry on Exh. 4, page 4 (Prepare for and attend hearing on Motion to value property)
Case Administration	11/9/17	Appear at Status Conference	2.6	\$1,300.00	Duplicative of entry on Exh. 4, page 13 (Appear at Continued Hearing on Disclosure Statement)

Applicant requests approval of \$35,742.00 in fees for services performed on the debtor's disclosure statement and plan. These fees appear to be excessive in light of the quality of Applicant's work. For example, Applicant (i) did not properly serve the disclosure statement and plan on two occasions; (ii) did not attach the correct stipulations to the plan or incorporate their terms into the plan; and (iii) did not provide accurate financial projections based on the debtor's historical income. These and other issues with the disclosure statement and plan necessitated multiple continued hearings. Based on the foregoing, the Court will reduce Applicant's fees in this category by 25%, and approve \$26,806.50 in fees for services performed on the debtor's disclosure statement and plan.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Gonzalez Villapando**

**Chapter 11**

Category	Date	Description	Time	Fee	Reason
Case Administration	9/19/17	Emailed client letters from Bayview	0.1	\$12.00	Secretarial

The Court will not approve the following expenses because they appear to be unnecessary and/or excessive.

Date	Description	Fee
7/27/2017	Parking Hearing on Motion for Setting Property Value & Hearing on Stipulation re Cash Collateral	\$12.32
5/25/2017	Serve Notice of Continued Hearing on Motions to Value	\$25.61
5/25/2017	Serve Notice of Continued Hearing on Motions to Value	\$24.00

Parking at the courthouse is free. In addition, the motions to value were continued in part because Applicant did not properly serve notice of the motions.

Applicant must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant (s) will be so notified.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#3.00** First amended disclosure statement describing first amended chapter 11 plan of reorganization

Docket 113

**Tentative Ruling:**

***Family Contribution.*** The debtor's brother has submitted a declaration attesting that he will contribute a lump sum payment of \$91,000 and \$13,500 per month thereafter to the debtor's first amended chapter 11 plan. For purposes of the confirmation hearing, the debtor must timely submit sufficient *documentary* evidence that his brother has the financial ability to make these contributions.

Proposed dates and deadlines regarding "Debtor's First Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "First Amended Disclosure Statement Describing Original Chapter 11 Plan:"

Hearing on confirmation of the Plan: **May 3, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **March 16, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **April 13, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **April 23, 2018.** Among other things, the debtor's brief

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

The debtor must submit an order incorporating the above dates, times and deadlines within seven (7) days.

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#4.00 Status conference re chapter 11 case**

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18;

Docket 1

**Tentative Ruling:**

The debtor has not timely filed his monthly operating report for January 2018.

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#5.00** Disclosure statement describing chapter 11 plan of reorganization

Docket 101

**Tentative Ruling:**

The debtors have not served the notice of hearing on Chase Bank in accordance with Fed. R. Bankr. P. 9013(b) and 7004(h) and Local Bankruptcy Rule 9013-1(a)(6), *i.e.*, by delivering a copy the notice to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process for Chase Bank.

Accordingly the Court will continue the hearing regarding the sufficiency of the debtors' proposed disclosure statement to **April 12, 2018 at 1:00 p.m.** No later than March 9, 2018, the debtors must serve Chase Bank with notice of the continued hearing date and of the deadline to file any objections no later than 14 days prior to that date.

Appearances on March 8, 2017 are excused.

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 6/8/17, 10/5/17; 10/19/17 (stip); 11/16/17(stip); 12/14/17;  
1/11/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference hearing in this case to **April 12, 2018 at 1:00 p.m.** to be held in conjunction with the hearing regarding the adequacy of the debtors' proposed disclosure statement.

Appearances on March 8, 2018 are excused.

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:16-12214 Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

**#7.00** Motion for order approving sale of assets of the estate  
(Litigation Claims)

Docket 56

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On August 1, 2016, Mahshid & Moshen Loghmani ("Debtors") filed a voluntary chapter 7 petition. David Keith Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On August 24, 2016, Debtors filed their schedules [doc. 14]. In their Statement of Financial Affairs ("SOFA"), Debtors listed two lawsuits, *Loghmani v. James Jeffery Little, et al.* ("Lawsuit 1") and *Loghmani v. Jan B. Tucker et al.* ("Lawsuit 2"), and wrote in "plus few more" in Part 4. Debtors also noted that Tessie Cleveland Community Service Corp ("Tessie") had attached, seized, or levied their single family residence located at 8212 Laurel Canyon Blvd. North Hollywood, CA 91601 (the "Laurel Canyon Property"). Debtors' SOFA did not list a Qui Tam action against Tessie also in progress at the time of filing, *United States of America, et al ex rel Mohsen Loghmani v. Tessie Cleveland Community Services Corp.* (the "Qui Tam Action") (Lawsuit 1, Lawsuit 2, and the Qui Tam Action collectively, the "Lawsuits")

Tessie is a non-profit corporation which provides mental health services to children and young adults. Its primary funding source is the Los Angeles County Department of Mental Health, which is funded by the federal and state governments. Moses Chadwick, Carolyn Chadwick (the "Chadwicks") are the executive director and chief operations officers of Tessie, respectively.

In Lawsuit 1, Mohsen Loghmani asserted claims against James Little, his associated LLCs, his associated trusts, Michael Thompson, the Chadwicks, and Tessie for malicious prosecution, fraudulent conveyance and other causes of action. That action

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

arose from an action filed by the Chadwicks to remove Moshen Loghmani's mechanic's lien from their residence. The Trustee believes this Lawsuit is time-barred because it was filed two years after the dismissal of the Chadwicks' action.

In Lawsuit 2, Mr. Loghmani filed a complaint against the County of Los Angeles and a number of other defendants, including the Chadwicks and Tessie, alleging waste of public funds. On November 2, 2017 the court dismissed Lawsuit 2, and Mr. Loghmani did not timely appeal.

In the Qui Tam action, Mr. Loghmani filed a complaint for violation of the federal and California False Claims Act against Tessie in the United States District Court, Central District of California. The complaint alleged misappropriation of government funds for the personal benefit of the Chadwicks. Mr. Loghmani pointed to Tessie's form 990 in their tax returns to assert that Tessie charges "excessive occupancy" for its property in Compton, California. The Trustee believes that Mr. Loghmani's claim is based on erroneous assumptions.

On December 4, 2017, counsel for Tessie contacted the Trustee and made an offer to purchase all of the rights, titles, claims and interest of Debtors in Lawsuit 1, Lawsuit 2, and the Qui Tam Action.

On February 14, 2018, the Trustee filed a motion to sell the Lawsuits (the "Motion") [doc. 56]. On February 22, 2018, Debtors filed their opposition (the "Opposition") [doc. 60]. On March 1, 2018, the Trustee filed his reply to the opposition (the "Reply"). On March 6, 2018, the Debtors filed their supplemental response to the Trustee's motion (the "Supplemental Response") [doc. 64].

## **II. DISCUSSION**

Debtors do not have standing to bring the Opposition. "To have standing to object to a bankruptcy order, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings." *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998). If a debtor can show a "reasonable possibility of a surplus after satisfying all debtors, then the debtor has shown a pecuniary interest and has standing to object to a bankruptcy order. *Id.* Unless the chapter 7 estate contains surplus funds to distribute to the debtor, a debtor may not object settlement of a lawsuit pursued by the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

trustee. *In re Peoples*, 764 F.3d 817, 820-821 (8th Cir. 2014).

In *Cult Awareness Network*, the debtor objected to the chapter 7 trustee's sale of its trade name on the basis that its trade name gave it standing in litigation against the Church of Scientology. The Seventh Circuit Court of Appeals held that the debtor did not show favorable chances of prevailing on complex litigation, nor that it was likely that the debtor would collect on its judgements, pay its litigation costs and attorney's fees and then have anything left over, considering the extent to which its debts far outweighed its assets. Consequently, that case did not present the kind of reasonable possibility of a surplus of assets that give a debtor standing to object to a trustee's asset sale.

Similarly, Debtors do not have standing to object to the Trustee's sale. Tessie, their largest creditor, has enormous claims against them [*see* doc. 33, p. 12-13], and Debtors state in the Opposition that they believe these claims have increased [doc. 60, p. 4]. Based on the Trustee's analysis of the Lawsuits, the possibility that Debtors could prevail on the claims and then recover sufficient funds to pay their creditors is extremely remote.

Debtors have not presented much in the way of evidence or coherent argument establishing that their Lawsuits are of any value to the estate aside from the sale. The Trustee's counsel, in her declaration, stated that Lawsuit 1 is likely time-barred, and even if it is not, the recovery for the malicious prosecution claim is tenuous because of the voluntary dismissal of the underlying action [doc. 56, p. 19]. Though Debtors state that the Trustee's assertion is incorrect in the Opposition, they do not provide any argument or evidence to that effect.

In the Opposition, Debtors argue that Lawsuit 2 consists of solely equitable claims, and should not be considered property of the estate. Debtors do not present any authority for that conclusion, which is inconsistent with the Ninth Circuit Bankruptcy Appellate Panel's broad construction of 11 U.S.C. § 541(a). *See In re Lahijani*, 325 B.R. 282 (B.A.P. 9th Cir. 2005) (stating that "property of the estate" is broadly construed and causes of action that exist independent of the bankruptcy can be, and often are, sold by bankruptcy trustees under section 363(b)). Because, as Debtors argue, Lawsuit 2 is based solely on declaratory relief, the only recovery to the estate on Lawsuit 2 would be from its sale.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

Finally, in the Supplemental Response, Debtors present a letter from Parker Strauss, LLP [doc. 64, Ex. B] stating that firm's willingness to take on the Qui Tam Action. There are several problems with this evidence. First, the letter explicitly declines to guarantee actual recovery from the suit. Second, Debtors have not provided the firm's proposed retainer agreement. The retainer agreement would provide additional information about whether the firm was willing to take the case on a contingency basis, or whether the estate must have cash on hand to litigate the Qui Tam Action. Overall, the letter does not demonstrate that pursuit of the action is in the best interest of the estate.

**III. CONCLUSION**

In light of the foregoing, Debtors have not presented sufficient evidence of the value of the Lawsuits to suggest that they have adequate standing to bring the Opposition. Accordingly, the Court will grant the Motion.

The Trustee must submit the order within seven (7) days.

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

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11495 Steven Nia**

**Chapter 7**

- #8.00** Trustee's motion for order:  
(A) Authorizing sale of assets of the debtor's bankruptcy estate free and clear of liens, claims and encumbrances;  
(B) Approving overbid procedure; and  
(C) Approving compromise of controversy

Docket 104

**Tentative Ruling:**

Taking into account the debtor's overbid [doc. 117], the Court will grant the motion - with the exception of the request to waive the 14 day-stay prescribed by Federal Rule of Bankruptcy Procedure ("Rule") 6004(h) - and will allow the sale to proceed subject to the procedures and terms of sale set forth in the motion.

In his opposition [doc. 110], the debtor requests: (1) that that any order approving the sale should decline to rule on the extent, validity or priority to Illusion Ventures' interest in the property and in the claims against the Chings; (2) that the 14 day-stay prescribed by Rule 6004(h) not be waived; (3) that if the Chings are not purchasers at the sale, the Court not authorize any releases in favor of the Chings; (4) that if the Chings are the purchasers, any releases with respect to them constitute releases on behalf of the estate only; and (5) that the Court not determine summarily the question of contempt for violating the automatic stay.

With the exception of the debtor's opposition to the waiver of the 14-day stay, all of the debtor's requests appear to be in accord with the procedures and terms set forth in the Trustee's motion to sell the assets [doc. 104]. Although the Trustee requests that the Court waive the 14-day stay, he has not provided a compelling reason for the Court to do so. Consequently, the Court will not grant that request.

The Trustee must submit the order within seven (7) days.

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

**Debtor(s):**

Steven Nia

Represented By  
Raymond H. Aver

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

---

2:00 PM

CONT... Steven Nia

**Chapter 7**

Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#9.00 Debtor's motion to disallow claim no. 1 of Internal Revenue Services**

Docket 99

**\*\*\* VACATED \*\*\* REASON: Withdrawal filed March 1, 2018 [doc. 110].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#10.00** Debtor's motion to disallow claim no. 3 of Franchise Tax Board

Docket 101

**\*\*\* VACATED \*\*\* REASON: This motion was withdrawn on February  
16, 2018 [doc. 107].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#11.00** Motion to withdraw as debtor's bankruptcy counsel

Docket 98

**Tentative Ruling:**

The Court will continue the hearing to **April 12, 2018 at 2:00 p.m.**

Pursuant to Local Bankruptcy Rule 9011-2(a), a corporation may not file a petition or otherwise appear without counsel in any case or proceeding. Consequently, the Court has concerns about the impact of granting the motion, as concerns the administration of this case.

On September 12, 2017, AAA Nursing Services Inc. (the "Debtor") filed a voluntary chapter 11 petition. On October 20, 2017, the United States Trustee filed a motion to dismiss or convert the Debtor's case pursuant to 11 U.S.C. § 1112(b) (the "Motion to Dismiss or Convert") [doc. 51]. On February 21, 2018, the Court entered an order granting the Motion to Dismiss or Convert and converting the Debtor's case to chapter 7 [doc. 105]. On February 21, 2018, David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee") [doc. 106].

On February 14, 2018, movant filed the pending motion to withdraw as counsel (the "Motion to Withdraw") [doc. 98]. In light of the subsequent conversion of the Debtor's case to chapter 7, the Court will continue the hearing to allow movant to serve notice of the Motion to Withdraw, the continued hearing thereon, and the deadline to file any response thereto, on the Trustee.

Appearances on March 8, 2018 are excused.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10178 Anton Akopian**

**Chapter 7**

**#12.00 Debtor's motion to vacate court's dismissal order**

Docket 14

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Anton Akopian

Represented By  
Robert Reganyan

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#13.00 Debtor's emergency motion to authorize use of cash collateral**

fr. 3/1/18

Docket 20

**Tentative Ruling:**

Grant to the extent as set forth below.

On January 18, 2018, the debtor filed a voluntary chapter 11 petition. In its petition, the debtor indicated that it is a single asset real estate ("SARE") debtor as defined in 11 U.S.C. § 101(51B). Because the debtor is a SARE, 11 U.S.C. § 362(d)(3) applies to the debtor's case. Section 362(d)(3) provides:

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 conditioning such stay—

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**JBC Staples, LLC**

**Chapter 11**

generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate[.]

Under the terms of the promissory note dated November 14, 2006, the debtor and DG Staples, LLC agreed to pay Principal Life Insurance Company the sum of \$2,230,000 together with interest on the unpaid balance at the rate of 6.04% per annum. The debtor's valuation of the property at issue is \$1,600,000. This amount also appears to be the value of Wells Fargo Bank, N.A.'s secured interest in the property at issue. 6.04% of \$1,600,000 is \$96,640 per annum in interest, which equals \$8,053.33 per month.

In light of the provisions of 11 U.S.C. § 362(d)(3)(B)(ii), it appears that an appropriate adequate protection payment to the secured creditor would be \$8,053.33 per month, to be paid from the rents generated by the debtor's encumbered real property.

**No later than 14 days** after entry of this order, the debtor must commence monthly payments in the amount of \$8,053.33 to Wells Fargo Bank, N.A. In addition, the debtor may use cash collateral to maintain the property, as specified in the debtor's proposed cash collateral budget. "[C]ourts have found that a debtor's use of cash collateral to maintain properties from which rents are being generated is a sufficient form of adequate protection." *In re Las Vegas Monorail Co.*, 429 B.R. 317, 341 (Bankr. D. Nev. 2010) (collecting cases).

As for the balance of the cash collateral, the debtor must sequester and account for such cash collateral until further order of this Court. At this time, the Court will not rule on the use of cash collateral for the payment of professional fees.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 08, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

The debtor must submit the order within seven (7) days.

*Tentative ruling re: evidentiary objections*

**Secured Lender's Evidentiary Objections to Declaration of Jack M. Cohen**

para. 2: overrule

para. 4: sustain as to "*which I believe will be exercised*," otherwise overrule

para. 5: overrule

para. 6: overrule

para. 8: overrule as to "*we had it appraised*" and "*We listed the Property for sale with a broker*"; otherwise sustain

para. 9: overrule

para. 12: overrule

para. 13: sustain as to prevailing market rates; overrule as to amount of adequate protection payments

para. 16: overrule

**Secured Lender's Objection to Declaration of Maryan Polhamus**

para. 3: overrule

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

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

10:30 AM

**1:17-13413 Mark Efrem Rosenberg**

**Chapter 13**

**#38.00** Motion to avoid junior lien on principal residence  
with Trinity Financial Services, LLC

Docket 18

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mark Efrem Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#39.00** Trustee's motion to dismiss case due to expiration of the plan

Docket 97

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#40.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#41.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18;

Docket 68

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:15-10893 Sarkis Derbeshyan**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 12/12/17; 2/13/18

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sarkis Derbeshyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11964 Luis E. SOLIS**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 12/12/17; 2/13/18

Docket 53

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Luis E. SOLIS

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14135 Dalia Goldin and Asher Goldin**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 30

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Dalia Goldin

Represented By  
David S Hagen

**Joint Debtor(s):**

Asher Goldin

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 67

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11712 Alfonso Ruiz Cruz**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18

Docket 47

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfonso Ruiz Cruz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12523 Brent Carpenter**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 6/13/17; 8/8/17; 10/3/17; 12/12/17

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brent Carpenter

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**1:13-16424 Mark Pinsker and Melanie Pinsker**

**Chapter 13**

**#48.00** Motion for order discharging debtors pursuant to the hardship discharge provisions of 11 USC 1328

Docket 82

**Tentative Ruling:**

For the reasons described below, the Court will continue this hearing to **April 10, 2018 at 11:30 a.m.** Debtors must file and serve any supplemental documents they wish to present no later than **March 27, 2018.**

**I. BACKGROUND**

On October 7, 2013, Mark Pinsker and Melanie Pinsker ("Debtors") filed a chapter 13 petition. Debtors are the sole employees of their wholly owned corporation, Special Projects Productions, Inc.

On February 18, 2014, the Court entered an order confirming Debtors' chapter 13 plan [doc. 20]. The Debtor's plan was for a 5 year term and paid out 18% to general unsecured creditors, with a monthly plan payment of \$900 for the first four months, then stepping up to \$919 for the remaining life of the plan. There is approximately one year left in the plan.

On November 16, 2017, the Debtor filed the Motion [doc. 82]. On February 20, 2018 the chapter 7 trustee (the "Trustee") filed her comments on the Motion (the "Comments") [doc. 86]. On February 28, 2018, Debtors filed their response to the Comments (the "Response") [doc. 90].

**II. DISCUSSION**

Although Debtors initially styled this Motion as one for a hardship discharge, the relief they request is to modify their plan under 11 U.S.C. § 1329. Debtors wish to obtain a postconfirmation loan to satisfy their plan payments in a lump sum as opposed to over the remaining term of the plan.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Mark Pinsker and Melanie Pinsker**

**Chapter 13**

Modifications to a confirmed chapter 13 plan must be proposed in good faith under 11 U.S.C. § 1325(a)(3). *In re Mattson*, 468 B.R. 361, 367 (9th Cir. B.A.P. 2012). The burden of establishing that a plan is submitted in good faith is on the debtor. *In re Warren*, 89 B.R. 87, 93 (9th Cir. BAP 1988). The Ninth Circuit Court of Appeals has articulated a test for good faith in which a court must consider the (1) substantiality of proposed plan payments; (2) whether the debtor has misrepresented facts in the plan; (3) whether the debtor has unfairly manipulated the Bankruptcy Code; and (4) whether the plan is proposed in an equitable manner. *In re Matteson*, 468 B.R. at 371-372.

Debtors do not acknowledge the Trustee's alternative calculation of the aggregate amount of their remaining plan payments, nor suggest that they are able to borrow the higher sum. Debtors also state that their 2014 tax debt will be paid, but do not clearly indicate if that payment will be via their intended lump sum payment or if they intend to pay any remaining IRS postpetition obligations separately.

On the other hand, Debtors do not propose to pay any less than the full amount of their confirmed plan, and there is no suggestion that they have unfairly manipulated the Bankruptcy Code. Debtors have made the majority of their confirmed chapter 13 plan payments, and in the face of their alleged declined income. it appears that they propose this modification in an effort to complete the obligations under their confirmed plan. Modification may be appropriate, but Debtors have not provided adequate disclosure.

### **III. CONCLUSION**

Debtors need to present further evidence that they have the good faith required for the requested early pay-off of their confirmed chapter 13 plan. At a minimum, Debtors should submit their amended Schedules I and J showing their current budget and an explanation of the way in which they will pay their outstanding income tax liabilities. In addition, Debtors should submit proof of their ability to obtain the proposed loan for the full amount of their aggregate remaining plan payments, as calculated by the Trustee (such as loan documents or a declaration).

Accordingly, the Court will continue this hearing to **April 10, 2018 at 11:30 a.m.** Debtors must file and serve any supplemental documents they wish to present no later than **March 27, 2018.**

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Mark Pinsker and Melanie Pinsker**

**Chapter 13**

**Debtor(s):**

Mark Pinsker

Represented By  
David S Hagen

**Joint Debtor(s):**

Melanie Pinsker

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#49.00** Motion to turn over funds in the amount of \$10,065.55 to the debtors as it is property of the bankruptcy estate; request for attorney fees of \$2,500.00

Docket 95

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

Wells Fargo Bank, N.A. ("Wells Fargo") is the beneficiary of the first deed of trust encumbering 23842 Erin Place, Canoga Park, California 91304 (the "Property"), recorded on September 2, 2005 (the "First Trust Deed"). Jose P. Ginez and Corazon S. Ginez (together, "Respondents") are the original borrowers under the corresponding note and the trustors under the First Trust Deed. (Doc. 60, Exh. D.)

Wells Fargo is the beneficiary of the second deed of trust encumbering the Property, recorded on March 28, 2006 (the "Second Trust Deed"). Respondents are the original borrowers under the corresponding note and the trustors under the Second Trust Deed. (Doc. 60, Exh. C.)

On December 31, 2009, Romulo Gramata Bernardino and Ladinila Aspiras Bernardino (the "Debtors") purchased the Property from Respondents, pursuant to an "All-Inclusive Deed of Trust and Assignment of Rents" (the "Third Trust Deed"). Respondents are the beneficiaries and the Debtors are the trustors of the Third Trust Deed. On January 6, 2010, the Third Trust Deed was recorded. (Doc. 60, Exh. F.)

On March 24, 2014, the Debtors filed a chapter 13 petition. On December 17, 2014, the Court confirmed the Debtor's chapter 13 plan (the "Plan") [doc. 35]. The Plan provides for direct payment by the Debtors to Wells Fargo for arrearages owing on the First and Second Trust Deeds. Respondents were served with notice of the hearing on confirmation of the Plan.

On September 21, 2015, Ms. Ginez contacted the Debtor's bankruptcy attorney stating

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras Chapter 13**

that she was a creditor of the estate and inquired as to how she would get paid through the bankruptcy. (Declaration of Kevin T. Simon ("Simon Decl."), ¶ 6.) On September 24, 2015, the Debtors filed a motion to avoid the Third Trust Deed (the "*Lam* Motion") [doc. 60]. On November 13, 2015, the Court entered an order approving the *Lam* Motion (the "*Lam* Order") [doc. 69]. The *Lam* Order provided that "no payments are to be made on the secured claim of the junior lienholder," and that the "claim of the junior lienholder is to be treated as an unsecured claim and is to be paid through the plan pro rata with all other unsecured claims." (Doc. 69, at p. 2.)

Because the Debtors purchased the Property with the Third Trust Deed, Respondents' name and address are on all loan documentation and statements from the First Trust Deed and the Second Trust Deed. (Simon Decl., ¶ 8.) The Debtors fell behind on the payment for the First Trust Deed, but continued to remit funds to Wells Fargo. After the Debtors defaulted on the First Trust Deed, Wells Fargo returned the mortgage payments to Respondents rather than the Debtors. (*Id.*, ¶ 9.)

On February 16, 2016, Wells Fargo issued a statement reflecting unapplied funds and a payment reversal of \$7,065.55, as well as unapplied funds of \$2,000.00. (Simon Decl., Exh. B.) On February 26, 2016, Wells Fargo mailed Respondents a letter with a check enclosed for \$1,000.00 advising Respondents the funds were returned because it was an insufficient amount to reinstate the loan. (Simon Decl., Exh. D.) On March 1, 2016, Respondents cashed the \$1,000.00 check from Wells Fargo. (Simon Decl., Exh. E.)

During the bankruptcy case, Respondents provided the Debtors with an "IOU" note reflecting payments received from returned checks from Wells Fargo in the amount of \$8,065.55 and crediting the Third Trust Deed with the same amount. (Simon Decl., Exh. F.)

## **II. RELEVANT LAW**

### ***A. Property of the Estate***

Pursuant to 11 U.S.C. § 541(a)(1),

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Romulo Gramata Bernardino and Ladinila Aspiras**  
property, wherever located and by whomever held:

**Chapter 13**

- (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.

In addition, for chapter 13 debtors, pursuant to 11 U.S.C. § 1306(a):

Property of the estate includes, in addition to the property specified in [section 541](#) of this title—

- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and
- (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

***B. Turnover of Estate Property***

Pursuant to 11 U.S.C. § 542—

- (a) 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.

...

- (c) Except as provided in [section 362\(a\)\(7\)](#) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

CONT...

**Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

Chapter 13 debtors have standing to assert the turnover right on the estate's behalf. *In re Lyle*, 324 B.R. 128 (Bankr. N.D. Cal. 2005) (chapter 13 debtor); *see also In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010). Property subject to a turnover action is limited to identifiable estate property and money due to the debtor without dispute. *See [In re Newman](#), 487 B.R. 193, 202* (9th Cir. B.A.P. 2013).

Turnover rights are effective against an entity that possesses or controls estate property at any point during pendency of the bankruptcy case. *[Shapiro v. Henson](#), 739 F.3d 1198, 1199* (9th Cir. 2014). An entity need not actually possess the property when the turnover action is filed, provided the entity possessed estate property at some time during the bankruptcy case. *See [In re Newman](#), 487 B.R. at 202* (ordering a debtor who received and spent a tax refund postpetition to pay the chapter 7 trustee prorated portion of refund attributable to income earned prepetition).

**C. *Effect of Plan Confirmation***

Pursuant to 11 U.S.C. § 1327(a), "[t]he 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."

**D. *Violation of the Automatic Stay***

11 U.S.C. § 362 provides in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—

- (1) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

CONT...

**Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

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.

- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or a recover a claim against the debtor that arose before the commencement of the case;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor...

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). An affirmative duty is imposed on non-debtor parties to comply with the stay, and to remedy any violations, even if inadvertent, of the automatic stay. *In re Dyer*, 322 F.3d 1178, 1191–92.

11 U.S.C. § 362(k)(1) provides the following:

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**  
circumstances, may recover punitive damages.

**Chapter 13**

Thus, a prima facie case under section 362(k) requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay. *In re Fernandez*, 227 B.R. 174, 181 (9th Cir. B.A.P. 1998).

The automatic stay "is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions . . . in nonbankruptcy fora against the debtor . . .". *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). "When there has been a violation of the automatic stay through the prosecution of state court litigation, the non-debtor parties have an affirmative duty to dismiss or stay the proceedings that give rise to the violation." *In re Garner*, 2011 WL 10676932, at \*3 (Bankr. E.D. Cal. June 8, 2011); *see also Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002).

"The maintenance of an active collection alone adequately satisfies the statutory prohibition against 'continuation' of judicial actions." *Eskanos*, at 1215. "To comply with [the] 'affirmative duty' under the automatic stay, [the creditor] 'needed to do what he could to relieve the violation.'" *Garner*, at \*3 (quoting *Sternberg v. Johnston*, 595 F.3d 937, 945 (9th Cir. 2010)).

In *Garner*, a creditor obtained a judgment against the debtor during the pendency of the bankruptcy case, but before the creditor had received notice of the bankruptcy filing. *Id.*, at \*1–2. Upon obtaining notice, the creditor did nothing to reverse the prohibited actions taken while the automatic stay was in effect. *Id.* The bankruptcy court found a violation of the automatic stay:

That being said, there is no dispute that Teran knew about the bankruptcy and the automatic stay when he received the letter from the Debtors' attorney about two weeks after the Judgment was entered. At that point, Teran had an affirmative duty to "unwind" what had happened in the small claims court, but he failed to take any remedial action. Teran contends that he did not respond to the letter because he did not know what to do. However, that does not change the fact that the failure to act was itself a violation of the automatic stay.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

*Id.* at \*4.

Under § 362(k)(1), above, an individual injured by a willful violation of the stay may recover "actual damages, including costs and attorneys' fees." 11 U.S.C. § 362(k)(1). The debtor "can recover as actual damages only those attorney fees related to enforcing the automatic stay and remedying the stay violation." *Sternberg*, 595 F.3d at 940; *see also In re Schwartz-Tallard*, 765 F.3d 1096, 1102 (9th Cir. 2014) (allowing the debtor to recover attorneys' fees incurred defending an appeal of the bankruptcy court's finding of a stay violation).

### **III. DISCUSSION**

#### ***A. Turnover of Estate Property***

Under § 541(a)(1) and § 1306(a)(2), the funds at issue are identifiable bankruptcy estate property and subject to turnover. In addition, the amount of the funds received by Respondents is not of inconsequential value to the estate. Respondents possessed and controlled estate property that the Debtors may use, sell, or lease during the pendency of the bankruptcy case.

In addition, Respondents had actual knowledge of the Debtors' bankruptcy case. On September 21, 2015, Ms. Ginez contacted the Debtors' attorney to inquire "how she should go about getting paid through the bankruptcy." Respondents also received actual notice of the Debtors' bankruptcy case because they were served notice of the Plan confirmation hearing, the *Lam* Motion and the *Lam* Order. As such, the turnover requirements under § 542 apply to Respondents.

The Plan was confirmed on December 17, 2014 and provided that the Debtors would pay Wells Fargo through the Plan to cure arrearages on the First Trust Deed and Second Trust Deed. Pursuant to § 1327, the provisions of the confirmed Plan bind each creditor, including Respondents. As such, pursuant to the confirmed Plan, Respondents were not entitled to retain the monies paid by the Debtors to Wells Fargo pursuant to the Plan.

Furthermore, pursuant to the *Lam* Order, no monies were to be paid to Respondents after the Third Trust Deed was avoided. Respondents' claim was to be paid through the Plan pro rata with all other unsecured claims. Thus, Respondents were not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

entitled to any of the monies returned by Wells Fargo.

The Motion seeks turnover of funds totaling \$10,065.55. However, the evidence attached to the Motion shows that Respondents cashed checks totaling \$8,065.55. Although there is a bank statement showing \$2,000 in unapplied funds, it is unclear whether Wells Fargo ever sent those funds to Respondents. Consequently, if Debtors seek turnover of this additional \$2,000, the Debtors must submit evidence showing that Respondents obtained possession of the other \$2,000.

***B. Violation of the Automatic Stay***

Here, Respondents violated the automatic stay by exercising control over property of the estate. It appears from the "IOU" note that Respondents were under the impression they could retain the money and credit it towards the debt owed to them. However, by retaining the checks and subsequently cashing them, Respondents exercised control over estate property in violation of § 362(a)(3). *See In re Lyle*, 324 B.R. 128; *In re Carlsen*, 63 B.R. 706, 711 (Bankr. C.D. Cal. 1986) (finding that the IRS violated both the automatic stay and the turnover requirements when it failed to return a check to the County after learning of the debtor's bankruptcy).

The violation of the automatic stay was willful because Respondents had actual knowledge of the Debtors' bankruptcy case at the time they retained the funds. "[T]he failure to return property of the estate with knowledge of the bankruptcy is a violation of both the automatic stay and of the turnover requirements of the Bankruptcy Code." *Abrams v. Sw. Leasing and Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-43 (9th Cir. B.A.P. 1991) (continuing retention by the creditor of repossessed vehicle after receiving notice of bankruptcy violated automatic stay); *see also In re Treasures, Inc.*, Case No. SC-13-1304, 2015 WL 925957, at \*21 (9th Cir. B.A.P. Mar. 3, 2015) (continuing retention of property of the bankruptcy estate violated the automatic stay). To preserve the "status quo" of the bankruptcy, Respondents would have had to return the funds to the Debtors or to Wells Fargo in order to relieve their violation. Respondents did not do so.

Accordingly, the Court will grant the Debtor's request for damages pursuant to § 362(k)(1). The Debtors do not include a breakdown of damages incurred as a result of the willful violation of the stay. The Debtors must supplement the Motion with an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

statement of actual damages, fees, and costs incurred.

Notwithstanding the foregoing, it does not appear that Respondents' conduct warrants punitive damages. The Court will deny the Debtors' request for punitive damages.

**IV. CONCLUSION**

In light of the foregoing, the Court will grant in part and deny in part the Motion. **No later than March 27, 2018**, the Debtors must file a supplemental declaration with (i) evidence that Respondents possessed monies in excess of \$8,065.55, and (ii) evidence regarding actual damages, fees, and costs incurred while litigating this matter.

The Debtors must submit the order within seven (7) days.

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

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**1:14-13194 Arturo Zamora Ballestros and Daisy G. Salvatierra**

**Chapter 13**

**#50.00** Application for final fees and costs for David A Tilem

fr. 2/13/18

**Case dismissed 7/12/17**

Docket 102

**Tentative Ruling:**

Law Offices of David A. Tilem ("Applicant"), counsel for the debtors – approve fees in the amount of \$22,046.25 and reimbursement of expenses in the amount of \$1,088.30, pursuant to 11 U.S.C. § 330. All amounts approved on an interim basis are approved on a final basis. Applicant is authorized to receive the remaining balance of \$11,679.92 for fees and reimbursement of expenses. The Court has not allowed fees in the amount of \$825.00 for the reasons below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 13 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Arturo Zamora Ballestros and Daisy G. Salvatierra**

**Chapter 13**

The Court finds that \$1,650.00 in fees incurred for attendance at routine hearings is excessive and unreasonable. Generally, Applicant could have reduced fees for each of these hearings by requesting a telephonic appearance or by engaging appearance counsel. The following fees will be discounted by 50%, for a reduction of \$825.

Date	Timekeeper	Description	Hours	Rate	Amount
5/3/17	DAT	MOTION FOR RELIEF FROM STAY HEARING.	1.2	\$500	\$600
5/17/17	DAT	ATTEND HEARING ON RELIEF FROM STAY MOTION – ADEQUATE PROTECTION ORDER MADE. TELEPHONE CALL TO CLIENT ON RETURN DRIVE, NOT IN, LEFT MESSAGE. TELEPHONE CALL TO ATTORNEY FOR CREDITOR ON RETURN DRIVE TO REQUEST ADDRESS FOR PAYMENTS.	2.1	\$500	\$1,050

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

Arturo Zamora Ballestros

Represented By  
Sylvia Lew  
David A Tilem

**Joint Debtor(s):**

Daisy G. Salvatierra

Represented By  
Sylvia Lew  
David A Tilem

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 13, 2018**

**Hearing Room 301**

11:30 AM

**1:17-13073 Martha Gladys Larreynaga Mendoza and Oscar Mendoza**

**Chapter 13**

**#51.00** Show cause hearing why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

Docket 26

**Tentative Ruling:**

On February 22, 2018, the Court issued an *Order to Show Cause Why Debtors' Counsel Should Not be Sanctioned for Failure to Appear at Confirmation Hearing* (the "OSC") [doc. 26], on the grounds that the debtors' counsel failed to appear at the confirmation hearing as required by LBR 3015-1(d). The debtors' counsel was ordered to explain her failure to appear, and file and serve on the debtors a written response to the OSC no later than February 27, 2018.

The debtors' counsel has not timely filed and served a response. If the debtors' counsel appears at the hearing on the OSC, and the debtors' counsel serves the response on the debtors, then the Court may discharge the OSC. However, if no appearance is made at OSC hearing, the Court may consider imposing sanctions on the debtors' counsel.

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

**Debtor(s):**

Martha Gladys Larreynaga Mendoza

Represented By  
Yelena Gurevich

**Joint Debtor(s):**

Oscar Mendoza Millan

Represented By  
Yelena Gurevich

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:16-13009 Ronald Asher Halper and June Halper

Chapter 7

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 12/6/17, 1/24/18

**Stip to continue filed 2/12/18**

Docket 41

\*\*\* VACATED \*\*\* REASON: Order entered 2/15/18 continuing hearing to  
4/18/18 at 9:30 AM

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ronald Asher Halper

Represented By  
Rob R Nichols

**Joint Debtor(s):**

June Halper

Represented By  
Rob R Nichols

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Jennifer C Wong

**Trustee(s):**

David Seror (TR)

Represented By  
Robert A Hessling



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#2.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTORS

fr. 2/21/18

Docket 100

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10126 Angela Cordero Britton**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

U.S. ROF III LEGAL TITLE TRUST 2015-1  
VS  
DEBTOR

fr. 1/10/18; 2/21/18 (stip)

Docket 55

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Angela Cordero Britton

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#4.00 Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 1/17/2018; 2/14/18

**STIP filed 3/9/18**

Docket 11

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
3/13/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Amir Elosseini

Represented By  
Kevin Tang

**Movant(s):**

HSBC Bank USA, National

Represented By  
Darlene C Vigil

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:18-10395 Juan Moises Morales Galvez

Chapter 7

#5.00 Motion for relief from stay [UD]

BOB WHITMAN, TRUSTEE KATALINA WHITMAN TRUST  
VS  
DEBTOR

Docket 5

**\*\*\* VACATED \*\*\* REASON: Motion is not in compliance with Local  
Bankruptcy Rule 5005-2(d)(1). Motion is OFF CALENDAR.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Moises Morales Galvez Pro Se

**Trustee(s):**

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#6.00 Motion for relief from stay [RP]

U.S. BANK TRUST, N.A.  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4) and annulment of the stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Grant movant's request to annul the automatic stay. "Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Here, movant was unaware of the debtor's bankruptcy petition before the foreclosure sale, and the debtor acted unreasonably in a way that has prejudiced movant. Regarding the movant's awareness, movant submitted a declaration testifying that it was not notified of the debtor's bankruptcy case until after the sale. Movant alleges that on January 16, 2018, it conducted a foreclosure sale of the property. Movant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... LOST COAST RANCH INC.**

**Chapter 7**

further alleges that on January 17, 2018, movant was faxed a copy of a quitclaim deed purporting to transfer the property from Deborah Beck Fidelman to the debtor. Such quitclaim deed was purportedly executed on February 17, 2012. There is no evidence that this quitclaim deed was recorded.

Three prior cases have affected the property. On May 16, 2012, Deborah Beck filed chapter 7 case no. 1:12-bk-14567-AA. As her residence address, Ms. Beck listed "22055 Ballinger Street, Los Angeles, CA 91311," which is also the address of the property at issue. Ms. Beck appears to be the individual who executed the quitclaim deed purportedly transferring the property to the debtor. On May 21, 2012, case no. 1:12-bk-14567-AA was dismissed.

On June 18, 2012, Ms. Beck filed chapter 7 case no. 1:12-bk-15585-AA, again listing "22055 Ballinger Street, Los Angeles, CA 91311" as her residence address. On February 22, 2013, Ms. Beck received a chapter 7 discharge.

On December 5, 2017, the debtor filed chapter 7 case no. 2:17-bk-24939-ER. The debtor listed its address as "11500 Olympic Boulevard, Suite 400, Los Angeles, CA 90064." On December 27, 2017, case no. 2:17-bk-24939-ER was dismissed.

With respect to the debtor's conduct in the pending case, in its petition the debtor listed its address as "7912 Ventura Canyon Avenue, Panorama City, CA 91402." The debtor did not list movant or the property in its schedules. The debtor has not opposed the pending motion. Based on the foregoing, it appears that the quitclaim deed faxed to movant one day after the foreclosure sale was part of an effort to hinder movant's foreclosure proceedings. For these reasons, the Court finds that annulment of the automatic stay is appropriate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... LOST COAST RANCH INC.**

**Chapter 7**

**Party Information**

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:18-10409 Olga Campos

Chapter 13

#7.00 Motion for relief from stay [UD]

HAIM RAMAR  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

**A. *The Foreclosure Sale***

On November 4, 2016, HSBC Bank USA, N.A. ("HSBC") conducted a foreclosure sale of the real property located at 7730 Quakertown Avenue, Los Angeles, California 91306 (the "Property"). The trustee's deed upon sale provided:

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by Olga Campos, A Single Woman, as Trustor, dated 12/07/2005 of the Official Records in the office of the Recorder of Los Angeles, California under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on 12/16/2005, instrument number 05 3101853, Book ---, Page --- and modified by that certain Loan Modification Agreement recorded on 03/31/2009 as Instrument Number 20090462020 of official records. Trustee having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including, among other things, as applicable, the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default or the posting of copies of the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Olga Campos**

**Chapter 13**

Notice of Sale or the publication of a copy thereof.

(Doc. 7, Exh. 1 to Exh. 3, at p. 2.)

***B. The First Bankruptcy Case***

On December 9, 2016, the debtor filed chapter 13 case no. 1:16-bk-13500-MB (the "First Bankruptcy Case"). On February 8, 2017, the First Bankruptcy Case was dismissed because the debtor did not appear at the § 341(a) meeting and/or did not make the required preconfirmation payments. (Case no. 1:16-bk-13500-MB, doc. 22.)

***C. The Debtor's State Court Action Against HSBC***

On March 28, 2017, the debtor filed an action in state court against HSBC and other defendants (the "State Court Action"). (Doc. 7, Exh. 1.) In the State Court Action, the debtor alleged causes of action including wrongful foreclosure, negligence, unfair trade practices, cancellation of note, quiet title, and fraud in the initial loan processing and failure to provide truthful disclosure. On July 6, 2017, HSBC and the other defendants filed a demurrer in the State Court Action. On August 17, 2017, the state court entered a tentative ruling on the demurrer in the defendants' favor. On August 22, 2017, the debtor filed a request for dismissal of the State Court Action.

***D. The Second Bankruptcy Case***

On May 16, 2017, the debtor filed chapter 13 case no. 1:17-bk-11292-VK (the "Second Bankruptcy Case"). On June 16, 2017, the Second Bankruptcy Case was converted to chapter 7 at the debtor's request. (Case no. 1:17-bk-11292-VK, docs. 13, 14.) On September 5, 2017, the Second Bankruptcy Case was dismissed because the debtor did not appear at the § 341(a) meeting. (Case no. 1:17-bk-11292-VK, doc. 22.)

***E. Movant Purchases the Property and Initiates Unlawful Detainer Proceedings Against the Debtor***

On December 18, 2017, movant purchased the Property at a lender-arranged auction. On December 29, 2017, the grant deed transferring the Property to movant was recorded. (Doc. 7, Exh. 2 to Exh. 3.) On December 31, 2017, movant served the debtor with a three-day notice to quit. (Doc. 7, Exh. 3 to Exh. 3.) On January 5, 2018, movant filed an unlawful detainer action against the debtor. (Doc. 7, Exh. 3.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Olga Campos**

**Chapter 13**

Trial in the unlawful detainer action was scheduled for February 16, 2018.

***F. The Pending Case***

On February 15, 2018—one day before the unlawful detainer trial—the debtor filed the pending case. In her petition, the debtor listed the Property's address as her residence address. (Doc. 1, at p. 2.) The debtor listed the Property in her Schedule A/B. (*Id.*, at p. 12.) The debtor did not list any creditors with claims secured by the Property. (*Id.*, at p. 23.) The debtor listed the following unsecured claims in her Schedule E/F:

- HSBC, \$15,000
- KS Enterprise, \$10,000
- Movant, \$1,500
- HSBC, \$75,000

(*Id.*, at pp. 24–25.) In addition, in her Schedule J, the debtor disclosed that she pays \$750 per month for rental or home ownership expenses. (*Id.*, at p. 32.)

On February 16, 2018, movant filed the pending motion (the "Motion") [doc. 7] and a supporting memorandum of points and authorities (the "Memorandum") [doc. 18]. Movant notes that pursuant to 11 U.S.C. § 362(c)(3)(A), because the Second Bankruptcy Case was pending within the preceding one-year period and was dismissed, the automatic stay in the pending case will expire 30 days after the petition date. Movant argues that the pending case was filed in bad faith and that the debtor is unlawfully occupying the Property. According to movant, the timing of the pending case was designed to hinder movant's attempt to gain possession of the Property. The debtor's incomplete and inconsistent schedules are further evidence of the debtor's bad faith.

On March 5, 2018, the debtor filed an untimely opposition (the "Opposition") [doc. 21]. In the Opposition, the debtor argues that she "can prove that the matter before the state court and this district court is constructive fraud brought under the disguise of a non-judicial foreclosure and illegal sale of said property to a third party to more cover

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Olga Campos**

**Chapter 13**

the alleged fraud scheme." (Doc. 21, at p. 2.) According to the debtor, HSBC had filed an illegal unlawful detainer action against the debtor, to which the debtor responded. To cover up "their unclean hands," HSBC sold the Property to movant, who purchased a "stolen property." (*Id.*, at p. 3.) HSBC lacked standing to sell the Property to movant, and thus movant's claim to title is void. (*Id.*, at pp. 3–4.) The Opposition was not supported by a declaration signed under penalty of perjury or any other evidence. The proof of service attached to the Opposition is incomplete, with no address provided for the individual purportedly executing service, and no date of service.

On March 6, 2018, movant filed his reply (the "Reply") [doc. 22]. In the Reply, movant objected to service of the Opposition and reiterated his arguments from the Memorandum.

## **II. DISCUSSION**

11 U.S.C. § 362(d)(1) provides for relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest[.]"

As an initial matter, movant's underlying state court proceeding is an unlawful detainer action. Movant did not use the mandatory form for a relief from stay motion based on an unlawful detainer action, Form F 4001-1.RFS.UD.MOTION.

Notwithstanding movant's use of the incorrect form, there are grounds for granting relief from the automatic stay based on the debtor's bad faith. On November 4, 2016, HSBC held a foreclosure sale of the Property. Subsequently, the debtor filed two bankruptcy cases that were dismissed. The debtor also filed the State Court Action, which she voluntarily dismissed after the state court issued an adverse tentative ruling. On December 18, 2017, movant purchased the Property at auction. Movant filed an unlawful detainer action against the debtor. On the eve of the unlawful detainer trial, the debtor filed the pending case.

The debtor opposes the Motion on the grounds that HSBC purportedly conducted a fraudulent foreclosure, and that such foreclosure was void. However, the proof of service attached to the Opposition is defective. In addition, the debtor's statements in the Opposition are not supported by a declaration or other evidence. Even if the debtor had provided competent evidence, her requests for affirmative relief are not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Olga Campos**

**Chapter 13**

proper in a relief from stay proceeding. *See Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985) (“Stay litigation is limited to issues of the lack of adequate protection, the debtor’s equity in the property, and the necessity of the property to an effective reorganization. Hearings on relief from the automatic stay are thus handled in a summary fashion.”).

**III. CONCLUSION**

In light of the foregoing, the Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

The Court will not annul the automatic stay. Movant has not identified what, if any, acts were taken postpetition in violation of the stay.

The Court will deny movant’s request for attorney’s fees, because movant has not provided any statutory or contractual basis for such fees.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Olga Campos

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-10629 Jonas B. Magcase

Chapter 13

#8.00 Motion for relief from stay [PP]

ALLY FINANCIAL INC.  
VS  
DEBTOR

Docket 34

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Jonas B. Magcase

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#9.00 Motion for relief from stay [PP]

VW CREDIT, INC.  
VS  
DEBTOR

Docket 52

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

David Polushkin

Represented By  
Elena Steers

**Joint Debtor(s):**

Inessa Polushkin

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-12299 Timothy Lee Weaver and Mary Jane Weaver

Chapter 13

#10.00 Motion for relief from stay [PP]

VW CREDIT INC  
VS  
DEBTOR

**Stipulation regarding adequate protection filed 3/12/18**

Docket 38

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 3/13/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Timothy Lee Weaver

Represented By  
Kenneth A Freedman

**Joint Debtor(s):**

Mary Jane Weaver

Represented By  
Kenneth A Freedman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 14, 2018

Hearing Room 301

9:30 AM

1:17-10747 Alvin Isidro

Chapter 13

#11.00 Motion for relief from stay [RP]

SETERUS, INC.  
VS  
DEBTOR

**Stipulation to continue filed 3/8/18**

Docket 36

\*\*\* VACATED \*\*\* REASON: Order entered 3/12/18 continuing hearing to  
4/18/18 at 9:30 AM.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Alvin Isidro

Represented By  
Robert M Aronson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10411 Sharon Azoulay**

**Chapter 13**

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

Docket 11

**Tentative Ruling:**

Grant motion on an interim basis and continue hearing to **April 18, 2018 at 9:30 a.m.** **No later than March 21, 2018**, the debtor must file and serve an amended motion and correct the issues noted below.

- The debtor did not sign the declaration attached to the motion. Pursuant to Local Bankruptcy Rule 9013-1(i): "Factual contentions involved in any motion . . . must be presented, heard, and determined upon declaration and other written evidence."
- The notice of the deadline to file a response to the motion is incorrect. In accordance with Judge Kaufman's self-calendaring procedures, a response to a motion to continue the automatic stay, if the motion is being heard on shortened notice, **must be filed and served two (2) court days before the hearing** - not seven (7) days, as inaccurately indicated in the notice.
- Also, it is unclear whether the debtor is asking the Court to continue the automatic stay as to all secured creditors, or only regarding the secured creditor OneWest Bank. If the debtor is requesting the Court to continue the automatic stay as to all secured creditors, the debtor did not properly serve all affected creditors. There appears to be more than one lienholder as to the debtor's real property. The debtor served the motion only on Onewest Bank and Barrett Daffin Frappier Treder.

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Sharon Azoulay**

**Chapter 13**

On September 1, 2017, the debtor filed a prior chapter 13 petition [case no. 1:17-bk-12354-MT]. In her prior schedules, the debtor disclosed monthly income in the amount of \$4,420 and monthly expenses in the amount of \$3,918.60, leaving net monthly income of \$501.40. (Case no. 1:17-bk-12354-MT, doc. 13, at p. 21.) In her prior chapter 13 plan, the debtor's proposed plan payment was \$555 for 12 months, then \$1,110 per month for 48 months. (Case no. 1:17-bk-12354-MT, doc. 14, at p. 2.)

In her pending case, the debtor's monthly income is \$4,500 and her monthly expenses are \$3,918.60, leaving net monthly income of \$581.40. (Doc. 17.) In her proposed chapter 13 plan, the debtor proposes a monthly payment of \$555 for 12 months, then \$1,364.96 for 48 months. (Doc. 13, at p. 2.)

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing, provided that **no later than April 13, 2018**, the debtor (i) tenders her April 2018 deed of trust payment to OneWest Bank in the amount of \$2,378.60 (as stated in her current Schedule I) as to the real property located at 5240 Wilkinson Avenue, Valley Village, CA 91606, and (ii) tenders her April 2018 plan payment in the amount of \$555 to the chapter 13 trustee. **No later than April 16, 2018**, the debtor must file a declaration to demonstrate that she made these payments. **No later than March 21, 2018**, the debtor also must file and serve notice of the continued hearing, and the deadline to file any response 14 days prior thereto, on *all* secured creditors.

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

**Debtor(s):**

Sharon Azoulay

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

1:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:17-01017 Weil v. Cazares et al

- #13.00** Status conference re: second amended complaint for:
1. Avoidance and recovery of post petition transfers;
  2. Conversion;
  3. Breach of fiduciary duty;
  4. Aiding and abetting breach of fiduciary duty and conversion;
  5. Turnover; and
  6. Accounting and payment for use and exploitation of trademark

fr. 4/19/17(stip); 6/21/17(stip); 8/23/17; 11/8/17; 11/15/17

**Stipulation to cont hrg filed 12/1/17**

Docket 78

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 11/30/18.

Deadline to file pretrial motions: 12/17/19.

Continued status conference: 1/23/19 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Dean Albert Maury Cazares

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

Ian Landsberg

**Defendant(s):**

Dean Albert Maury Cazares	Pro Se
Burton C. Bell	Pro Se
Scott Koenig	Pro Se
Fear Campaign, Inc.	Pro Se
Oxidizer, Inc.	Pro Se
Stanley Vincent	Pro Se

**Plaintiff(s):**

Diane C. Weil	Represented By C John M Melissinos
---------------	---------------------------------------

**Trustee(s):**

Diane Weil (TR)	Represented By C John M Melissinos
-----------------	---------------------------------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

1:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#14.00** Status conference re: complaint to determine nondischargeability of debt 11U.S.C. §523(a)(2)(A) and § 523(a)(2)(B)

fr. 1/10/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Per the Court's ruling at the 3/7/18 status conference, this matter has been continued to the 4/11/18 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By  
Richard W Snyder

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12592 Tiffany Alexandra Fox**

**Chapter 7**

Adv#: 1:18-01001 Stokes v. Fox

**#15.00** Status conference re: complaint for objection to discharge

Docket 1

**\*\*\* VACATED \*\*\* REASON: Another summons issued 2/1/18. Status  
conference rescheduled for 3/28/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Tiffany Alexandra Fox	Pro Se
-----------------------	--------

**Defendant(s):**

Tiffany A. Fox	Pro Se
----------------	--------

**Plaintiff(s):**

Gavin H Stokes	Pro Se
----------------	--------

**Trustee(s):**

David Seror (TR)	Pro Se
------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:18-01002 TJ's Metal Manufacturing Inc v. Akhlaghpour

**#16.00** Status conference re: complaint for non-dischargeability of debt pursuant to 11 USC 523(a)(4) and 11 USC 523(a)(6)

Docket 1

**Tentative Ruling:**

On February 9, 2018, the defendant filed an answer and demand for jury trial [doc. 3]. Defendant does not have a right to a jury trial in a nondischargeability action under 11 U.S.C. § 523. *In re Hashemi*, 104 F.3d 1122, 1124-25 (9th Cir. 1996); *In re Sasson*, 424 F.3d 864, 869-70 (B.A.P. 9th Cir. 2005); and *In re Valle*, 469 B.R. 35 (Bankr. D. Idaho 2012).

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: April 30, 2018.

Deadline to complete one day of mediation: 5/18/18

Deadline to file pretrial motions: 6/1/18.

Continued status conference: 6/20/18 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

1:30 PM

CONT... Mehri Akhlaghpour

Chapter 11

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

TJ's Metal Manufacturing Inc

Represented By  
Bartolo D Carrillo



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

1:30 PM

1:17-13160 Shalva Shalom Krihali

Chapter 7

Adv#: 1:18-01009 Zimmerman et al v. Krihali

#17.00 Status conference re: complaint for determination of dischargeability and objection to debtor's discharge pursuant to section 523(a)(6)

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **March 28, 2018 at 2:30 p.m.** to be held in conjunction with the hearing regarding defendant's *Motion to Strike Exhibit C to Plaintiff's Complaint in its Entirety on the Grounds that it is Redundant and Immaterial, and to Strike Paragraph 2 and Paragraphs 4-16 of Exhibit C on the Grounds that they Contain Scandalous and Salacious Material.*

Appearances are excused on March 14, 2018.

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

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Pro Se

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

Gabor Szabo

Represented By  
Gabor Szabo

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

1:30 PM

1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

#17.10 Plaintiff's motion for leave to join additional party defendants  
pursuant to Fed. R. Bankr. Pro. 7020  
[Status Conference]

fr. 2/7/18; 2/18/18

Docket 205

**Tentative Ruling:**

The parties should be prepared to address the status of coordinating a mediation session with the Hon. Sheri Bluebond, United States Bankruptcy Judge.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#18.00** Motion of Cit Bank, N.A. to dismiss adversary complaint

Docket 6

**Tentative Ruling:**

Deny as moot.

On June 30, 2017, Steven Mark Rosenberg ("Debtor") filed his voluntary chapter 7 petition. On November 27, 2017, Debtor filed an adversary complaint against Deutsche Bank National Trust Company, Ocwen Loan Servicing, Inc., Alliance Bancorp, Inc. ("Alliance"), Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc., One West Bank ("One West"), and Does 1-25.

On December 29, 2017, CIT Bank, N.A. (f/k/a One West Bank, N.A.) ("CIT Bank"), erroneously sued as One West Bank, filed a motion to dismiss the adversary complaint [doc. 6] (the "Motion"). On January 23, 2018 Debtor filed a notice of voluntary dismissal of the adversary complaint as to CIT Bank and Alliance [doc. 13].

Pursuant to Federal Rule of Civil Procedure ("FRCP") 41, a plaintiff may voluntarily dismiss an action without a court order if the notice of dismissal is filed before the opposing party files either an answer or a motion for summary judgment. Here, CIT Bank has filed neither an answer nor a motion for summary judgment, so it appears Debtor may voluntarily dismiss it without moving for an order. Consequently, CIT Bank is no longer a defendant in this action, and its motion to dismiss is moot.

Appearances on March 14, 2018 are excused.

The Court will prepare the order.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

CIT BANK, N.A. (f/k/a One West

Represented By  
KRISTIN WEBB

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

- #19.00** Status conference re complaint :
- (1) violation of 11 U.S.C. code 524(a)(2)-debtor discharge injunction.
  - (2) violation of FRBP, Rule 3001(c)(s)(c); failure to file proof of claim re security interest statement of amount to cure default as of petition filing date.
  - (3) violation of FRBP, rule 3001(c)(3)(C), failure to file attachment to appropriate official form re security interest in debtor's principal residence.
  - (4) fraudulent concealment
  - (5) violation of U.S.C. code 157; fraud and deceit
  - (6) declaratory relief

fr. 1/24/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **April 4, 2018 at 2:30 p.m.** to be held in conjunction with the hearing regarding the *Motion for Judgment on the Pleadings* filed by defendants MERS Mortgage Electronic Registration Systems, Inc. and Ocwen Loan Servicing, Inc. [doc. 16].

Appearances are excused on March 14, 2018.

**Party Information**

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg Chapter 7**

Ocwen Loan Servicing, Inc Pro Se

Alliance Bancorp, Inc Pro Se

Alliance Bancorp Estate Trustee Pro Se

MERS Mortgage Electronic Pro Se

One West Bank Pro Se

DOES 1 through 25, inclusive Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg Pro Se

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

2:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#20.00** Motion for an order dismissing plaintiff's claims for relief for non-dischargeability pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure without leave to amend

**STIP to cont file 3/1/18**

Docket 6

**\*\*\* VACATED \*\*\* REASON: Order entered 3/2/18 cont matter to 4/18/18 @ 2:30pm.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Represented By  
Noreen A Madoyan

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Preovolos

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

2:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#21.00** Status conference re complaint to determine dischargeability of a debt due to fraud, breach of fiduciary duties, and willful and malicious injury

fr. 1/24/18

**STIP to cont filed 3/1/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Oder entered 3/2/18 cont matter to 4/18/18 @ 2:30pm.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Pro Se

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Prevolos

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#22.00** Defendant, Earnest Charles Barreca's motion to exclude plaintiffs' evidence

fr. 3/7/18

Docket 155

**\*\*\* VACATED \*\*\* REASON: Order entered 3/8/18 continuing hearing to 3/21/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 14, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#23.00** Status conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18

Docket 12

**Tentative Ruling:**

The Court will continue the status conference to **March 21, 2018 at 1:30 p.m.** to be held in conjunction with the hearing regarding the defendant's *Motion to Exclude Plaintiff's Evidence* which has been continued to that date and time [doc. 164].

Appearances are excused on 3/14/18.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 14, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:11-10426 Georges Marciano**

**Chapter 11**

**#1.00 Post confirmation status conference**

fr. 10/24/13; 3/13/14; 7/10/14; 1/8/15; 1/22/15; 4/23/15; 10/22/15;  
3/17/16; 9/15/16; 3/16/17; 9/14/17

Docket 1

**Tentative Ruling:**

Continue to **April 12, 2018 at 1:00 p.m.** to allow time for the plan administrator to lodge an order regarding his motion for a final decree and order closing this case filed on January 30, 2018 [doc. 3012].

Appearances on March 15, 2018 are excused.

**Party Information**

**Debtor(s):**

Georges Marciano

Represented By  
Michael E Reznick  
Michael C Heinrichs  
Jeremy V Richards  
Jonathan J Kim  
Robert Mockler  
Bernard R Given

Beverly Hills Antiques, Inc.

Represented By  
Jeremy V Richards  
Jeffrey L Kandel  
Jonathan J Kim

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Georges Marciano**

**Chapter 11**

Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders  
Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:11-10439 Navid Bahrami-Daghigh**

**Chapter 11**

**#2.00 Post confirmation status conference**

fr. 4/26/12; 8/30/12; 9/6/12; 9/13/12; 01/31/13; 7/18/13;  
11/14/13; 3/13/14; 9/18/14; 3/19/15; 9/17/15; 3/17/16; 9/15/16; 3/16/17; 9/14/17

Docket 238

**Tentative Ruling:**

Continue to **June 7, 2018 at 1:00 p.m.** On February 22, 2018 the Court entered an order of discharge in this case [doc. 335]. As requested in the debtor's status report [doc. 338], the Court will continue this status conference for the debtor's counsel to file a final fee application.

Appearances on March 15, 2018 are excused.

**Party Information**

**Debtor(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**Movant(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#3.00 Confirmation of Third Amended Chapter 11 Plan**

fr. 1/25/18

Docket 196

**Tentative Ruling:**

Confirm *Third Amended Chapter 11 Plan of Reorganization Filed by Debtor as Revised on November 15, 2017* dated November 15, 2017 [doc. 209]. No later than **July 5, 2018**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **July 19, 2018 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

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

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#4.00 Status conference re chapter 11 case**

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017;  
1/11/18; 1/25/18

Docket 1

**Tentative Ruling:**

See calendar no. 3.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 9/7/17; 10/5/17; 2/8/18;

Docket 1

**Tentative Ruling:**

The Court will set the hearing on the adequacy of the debtor's proposed disclosure statement [doc. 113] on **May 10, 2018 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, the debtor must provide notice of the hearing, the ability of creditors to receive, on request, copies of the plan and related proposed disclosure statement, and the deadline to file any objections to the proposed disclosure statement.

**Party Information**

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#6.00** Status conference re: chapter 11 case

fr. 10/19/17

Docket 1

**Tentative Ruling:**

The Court will set the hearing on the adequacy of the debtors' proposed disclosure statement [doc. 45] on **May 10, 2018 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, the debtors must provide notice of the hearing, the ability of creditors to receive, on request, copies of the plan and related proposed disclosure statement, and the deadline to file any objections to the proposed disclosure statement.

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#7.00** Status conference re: chapter 11 case

Docket 14

**Tentative Ruling:**

The debtor has not yet filed any monthly operating reports.

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **May 11, 2018.**

Deadline to mail notice of Bar Date: **March 19, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **June 29, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on July 19, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor (s) in possession to file a proposed plan and related disclosure statement.

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#8.00** Debtor's motion for authority to incur secured debt

fr. 1/18/18; 2/15/18

**Mtn to cont hrg fld 2/28/18**

Docket 440

**\*\*\* VACATED \*\*\* REASON: Order entered 3/12/18 continuing hearing  
to 4/12/18 at 2:00 PM [Dkt 450]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 15, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#9.00** Application by debtor and debtor in possession to employ James J. Little and Trial Advocacy Group, LLC as special litigation counsel and approval of hourly fee

fr. 1/18/18; 2/15/18

**Mtn to cont hrg fld 2/28/18**

Docket 428

**\*\*\* VACATED \*\*\* REASON: Order entered 3/12/18 continuing hearing to 4/12/18 at 2:00 PM [Dkt 450]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12886 Elizabeth E. Molina**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and American Honda  
Finance Corporation

fr. 2/20/18

Docket 10

**Party Information**

**Debtor(s):**

Elizabeth E. Molina

Represented By  
R Grace Rodriguez

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-12906 Juan Carlos B Arreola and Priscilla Lopez**

**Chapter 7**

**#2.00** Reaffirmation agreement between debtor and  
Logix Federal Credit Union

Docket 12

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

**Debtor(s):**

Juan Carlos B Arreola

Represented By  
Lauren M Foley

**Joint Debtor(s):**

Priscilla Lopez

Represented By  
Lauren M Foley

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13152 Maria A Castaneda**

**Chapter 7**

**#3.00** Reaffirmation agreement between debtor and  
Logix Federal Credit Union

Docket 17

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

**Debtor(s):**

Maria A Castaneda

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13312 Ashley A De La O**

**Chapter 7**

**#4.00** Reaffirmation agreement between debtor and  
Wells Fargo Bank N.A. d/b/a Wells Fargo Dealer Services

Docket 8

**Party Information**

**Debtor(s):**

Ashley A De La O

Represented By  
R Grace Rodriguez

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:17-13373 Ronnie Dee Sims**

**Chapter 7**

**#5.00** Reaffirmation agreement between debtor and  
Nissan Motor Acceptance Corporation

Docket 11

**Party Information**

**Debtor(s):**

Ronnie Dee Sims

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10085 Khemnak Chatchaiyan**

**Chapter 7**

**#6.00** Reaffirmation agreement between debtor and  
Ford Motor Credit (2014 Ford Escape)

Docket 9

**Party Information**

**Debtor(s):**

Khemnak Chatchaiyan

Represented By  
Daniel King

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10085 Khemnak Chatchaiyan**

**Chapter 7**

**#7.00** Reaffirmation agreement between debtor and  
Ford Motor Credit Company LLC (2014 Ford Fusion)

Docket 13

**Party Information**

**Debtor(s):**

Khemnak Chatchaiyan

Represented By  
Daniel King

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10120 William Kent Roberson**

**Chapter 7**

**#8.00** Reaffirmation agreement between debtor and  
Toyota Motor Credit Corporation

Docket 8

**Party Information**

**Debtor(s):**

William Kent Roberson

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 21, 2018

Hearing Room 301

9:30 AM

1:18-10459 Cheryl Placencia

Chapter 11

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

Docket 14

**Tentative Ruling:**

Grant motion on an interim basis and continue hearing to **May 2, 2018 at 9:30 a.m.**

**I. BACKGROUND**

Previously, the debtor filed the following six bankruptcy cases:

Case No.	Chapter	Disposition
97-25708	13	Dismissed on 1/27/98 for failure to make plan payments
98-10704	7	Converted on 4/20/98; standard discharge on 8/3/98
10-11404	13	Dismissed on 7/29/11 for failure to make plan payments
11-20540	7	Converted on 11/9/11; standard discharge on 3/14/12
16-12629	11	Dismissed on 1/19/17 on motion by the United States Trustee
17-11847	11	Dismissed on 1/5/18 on motion by the United States Trustee

***The Fifth Bankruptcy Case***

On September 9, 2016, the debtor filed chapter 11 case no. 1:16-bk-12629-VK (the "Fifth Bankruptcy Case"). In her Schedules I & J, the debtor listed her monthly income as \$11,050.00 and her monthly expenses as \$5,685.00, leaving a net monthly income of \$5,365.00. The debtor stated that she was employed as a registered nurse for three weeks, but did not give a name or address for her employer. (Case no. 1:16-bk-12629-VK, doc. 19, at pp. 20–24.)

On December 2, 2016, the United States Trustee ("UST") filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the Fifth Bankruptcy Case (the "First Motion to Dismiss") [case no. 1:16-bk-12629-VK, doc. 37]. The UST alleged that the debtor had not properly prepared her monthly operating reports and attached required bank

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 21, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cheryl Placencia**

**Chapter 11**

statements, and was paying professional fees without Court approval. The debtor did not oppose the First Motion to Dismiss. On January 19, 2017, the Court entered an order granting the First Motion to Dismiss and dismissing the Fifth Bankruptcy Case [case no. 1:16-bk-12629-VK, doc. 46.]

***The Sixth Bankruptcy Case***

On July 12, 2017, the debtor filed case no. 1:17-bk-11847-VK (the "Sixth Bankruptcy Case"). In her Schedules I & J, the debtor listed her monthly income as \$5,500.00 and her monthly expenses as \$5,335.00, leaving a net monthly income of \$165.00. The debtor indicated that she was employed as a registered nurse for Senior Hospice Care for two years. (Case no. 1:17-bk-11847-VK, doc. 10, at pp. 19–22.)

On August 6, 2017, the debtor filed a motion to continue the automatic stay (the "First Motion to Continue Stay") [case no. 1:17-bk-11847-VK, doc. 20]. The Court twice continued the hearing on the First Motion to Continue Stay so that the debtor could cure her service errors. On September 20, 2017, the Court issued a ruling granting the First Motion to Continue Stay and directing the debtor to submit an appropriate order within seven days. The debtor did not submit the order.

On November 16, 2017, the UST filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the Sixth Bankruptcy Case (the "Second Motion to Dismiss") [case no. 1:17-bk-11847-VK, doc. 48]. The UST alleged that the debtor had not provided evidence of vehicle insurance coverage or monthly operating reports for August and September 2017. On January 5, 2018, the Court entered an order granting the Second Motion to Dismiss and dismissing the Sixth Bankruptcy Case [case no. 1:17-bk-11847-VK, doc. 57.]

***The Pending Bankruptcy Case***

On February 21, 2018, the debtor filed the pending case. In her pending case, the debtor's Schedules I & J indicate monthly income is \$7,350.00 and monthly expenses of \$5,825.00, leaving net monthly income of \$1,525.00. The debtor states that she has been self-employed as a registered nurse for ten years. (Doc. 1, at pp. 29–32.)

On March 9, 2018, the debtor filed a motion to continue the automatic stay (the "Second Motion to Continue Stay") [doc. 14] and an application for an order



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 21, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cheryl Placencia**

**Chapter 11**

shortening time to hear the Second Motion to Continue Stay (the "Application") [doc. 15]. The Court entered an order granting the Application and setting a hearing for March 21, 2018 (the "OST") [doc. 16].

In the Second Motion to Continue Stay, the debtor alleges that in the Sixth Bankruptcy Case, she was initially compliant with UST requirements. However, the debtor became ill and could not remain compliant. In addition, the debtor states that she lost 90% of her income. The debtor states that she is substantially compliant in the pending case and "has arranged backup" in the form of family contributions to remain compliant. The debtor further states that her income has increased and stabilized. The debtor states that she is willing to provide monthly adequate protection payments to her secured lender.

## **II. DISCUSSION**

As an initial matter, in the OST, the Court instructed the debtor to provide telephonic notice to the UST by March 13, 2018. In the debtor's declaration regarding service, the debtor does not state that she gave telephonic notice to the UST [doc. 19].

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed. Under 11 U.S.C. 362(c)(3)(C)(i)(III), a case is presumptively filed not in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a chapter 7 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

In the Second Motion to Continue Stay, the debtor states that her income has increased and stabilized since the dismissal of the Sixth Bankruptcy Case. In the Sixth Bankruptcy Case, the debtor's schedules showed monthly income of \$5,500 and monthly expenses of \$5,335.00, leaving net monthly income of \$165.00. In her pending case, the debtor's monthly income is \$7,350.00 and her monthly expenses are \$5,825.00, leaving net monthly income of \$1,525.00. In addition, the debtor states that she is compliant with UST requirements and has "arranged backup" to ensure compliance.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 21, 2018

Hearing Room 301

9:30 AM

CONT...

**Cheryl Placencia**

**Chapter 11**

Notwithstanding these assertions and the lack of an opposition to her motion, the debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since her prior case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed. The debtor has made inconsistent statements regarding her work history. In the Fifth Bankruptcy Case, the debtor stated that she was employed as a registered nurse for three weeks, but did not state her employer. In the Sixth Bankruptcy Case, the debtor stated that she was employed as a registered nurse for Senior Hospice Care for two years. In her pending case, the debtor states that she has been self-employed as a registered nurse for ten years.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than March 28, 2018**, the debtor must file and serve notice of the continued hearing on *all* secured creditors. **No later than April 13, 2018**, the debtor must (i) tender her April 2018 deed of trust payment to Deutsche Bank/Nationstar in the amount of \$3,500.00 (as stated in her current Schedule J) as to the real property located at 11922 Louise Ave., Granada Hills, CA 91344; and (ii) file a declaration *supported by admissible evidence* of her employment status and her family members' ability to make contribution payments. **No later than April 25, 2018**, the debtor must file a declaration to demonstrate that she made her April 2018 deed of trust payment.

The Court will prepare the order.

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

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 21, 2018

Hearing Room 301

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#2.00** Defendant, Earnest Charles Barreca's motion to exclude plaintiffs' evidence

fr. 3/7/18; 3/14/18

**Stip to cont hrg fld 3/20/18**

Docket 155

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 3/20/18  
continuing hearing to 3/23/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 21, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 21, 2018

Hearing Room 301

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#3.00** Status conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18

**Stip to cont hrg fld 3/20/18**

Docket 12

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 3/20/18  
continuing hearing to 3/23/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 21, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Defendant, Earnest Charles Barreca's motion to exclude plaintiffs' evidence

fr. 3/7/18; 3/14/18; 3/21/18

Docket 155

**Tentative Ruling:**

As discussed below, the Court will deny in part and continue in part the Motion to Exclude Plaintiff's Evidence (the "Motion").

**I. BACKGROUND**

On February 13, 2015, Ernest Charles Barreca ("Defendant") filed a voluntary chapter 7 petition.

On April 18, 2013, Gerson and Gertrude Fox ("Plaintiffs") filed a complaint in the Los Angeles County Superior Court seeking damages against Defendant on several causes of action, including Elder Abuse, Fraud, Deceit and Conversion (the "State Court Action") [doc. 108, Exh. E]. On July 8, 2014, the court in the State Court Action entered a default judgment against Defendant in the amount of \$7,958,622.62 [doc. 108, Exh. F].

On May 15, 2015, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(4) and (6) [doc. 1]. On July 27, 2015, Plaintiffs filed a first amended complaint, which added claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B) (the "FAC") [doc. 12].

The FAC alleged that Mr. Fox agreed to go into business with Michael Kamen, who had a real estate business that acquired and sold commercial properties. These investments took the form of several single purpose entity limited liability companies or limited partnerships (the "Real Estate LLCs"). In October 2006, Defendant became the Chief Executive Officer of Mika Realty Group and took responsibility for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

managing the Real Estate LLCs. The FAC alleged that Defendant drove SPEs into default by failing to pay obligations and enabled his friends to buy the SPEs' promissory notes at a steep discount.

On August 5, 2016, Plaintiffs provided Defendant with their Federal Rule of Civil Procedure ("FRCP") 26 initial disclosures of witnesses and evidence. Plaintiffs never amended or supplemented their initial disclosures [doc. 159, Declaration of Jeff Katofsky, Esq., ¶ 2].

On April 27, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 79], setting the following deadlines: (A) April 26, 2017 as the discovery cutoff date; (B) May 5, 2017 as the last day to file pretrial motions; (C) May 24, 2017 as the date by which the parties must file a joint pretrial stipulation; and (D) June 7, 2017 as the pretrial conference.

On May 5, 2017, Defendant timely filed a motion for summary judgment (the "MSJ") [doc. 86]. On May 31, 2017, the parties filed an initial pretrial stipulation (the "IPS") [doc. 99]. On June 21, 2017, Plaintiffs filed an opposition to the MSJ [doc. 107]. On June 28, 2017, Defendant filed a reply to the opposition to the MSJ [doc. 117]. Defendant did not object to the use of any exhibits in the opposition to the MSJ pursuant to FRCP 26(a)(1) and 37(c). On July 12, 2017, the Court denied the MSJ [doc. 121].

On July 12, 2017, at a pretrial conference in this case, the Court adopted a pretrial briefing and witness testimony schedule. The Court stated that it would take all direct testimony by declaration, except to the extent that any hostile witness would be questioned by an adverse party, the Court would take that testimony at trial. Specifically the Court referenced hostile witnesses Defendant, Kevin Golshan, Michael Kamen, Mohamed Islam, Edwin Kaftal and Peter Mehrian. Otherwise, the declarations of Plaintiffs' witnesses were required to be filed 28 days before trial, and declarations of Defendant's witnesses were to be filed 21 days prior to trial. The Court also set deadlines of 14 days before trial for evidentiary objections to the declarations, and seven days before trial for responses to those evidentiary objections.

On December 20, 2017, at a pretrial conference, the Court set a pretrial schedule in this proceeding. During the hearing, the Court decided to bifurcate this proceeding.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Pursuant to the Court's decision, the first phase of this proceeding will pertain to Plaintiffs' nondischargeability causes of action. After trial on those causes of action has concluded, and depending on the Court's decisions regarding those issues, it will hold trial to assess the issue of damages.

On January 5, 2018, the Court entered another scheduling order (the "Final Scheduling Order") [doc. 143], this time setting the date by which the parties must file a joint pretrial stipulation as February 5, 2018, setting a pretrial conference for February 14, 2018 and trial for the week of May 29, 2018.

On February 5, 2018, the parties filed a joint pretrial stipulation (the "JPS") [doc. 145]. The parties attached their respective exhibit and witness lists to the JPS. On February 8, 2018, Defendant filed the Motion, outlining objections to each of Plaintiffs' JPS exhibits largely on the grounds of relevance, lack of foundation, and failure to provide FRCP 26 disclosures [doc. 155]. On February 15, 2018, Defendant filed a supplemental motion to exclude witnesses in the JPS which Plaintiffs did not previously disclose pursuant to FRCP 26 (the "Supplemental Motion") [doc. 159]. The Supplemental Motion attached Plaintiffs' initial disclosures (the "Initial Disclosures") as an exhibit. On February 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 160].

## **II. DISCUSSION**

### **A. Special Issues**

In the Opposition, Plaintiffs state that they do not object to their Exhibits 56, 57 and 82 being excluded from trial. Plaintiffs also have withdrawn Exhibit 72 (it is duplicative of Exhibit 73). These exhibits are no longer at issue.

Defendant objected to Exhibits 88-90, which are partial deposition transcript of Defendant's deposition, on the grounds that Plaintiffs sought to only include selections of the transcript in evidence. In the Opposition, Plaintiffs state that they stipulate to include the whole transcript.

In the Motion, Defendant objects to Exhibit 71, which he states is an operating agreement of York Square, LLC, on several grounds including relevance, hearsay,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT... Ernest Charles Barreca

Chapter 7

mischaracterization and that it was not included in the initial disclosures. Plaintiffs contend that their Exhibit 71 is actually a blank document which was left blank for technical reasons. If Plaintiffs believe that document to be blank, presumably they do not intend to submit any document as Exhibit 71. Plaintiffs should withdraw the document if this is the case.

Due to what appears to be a typographical error, Defendant labeled his objection to Plaintiffs' Exhibit 23 ("Bank Statement of Broadway Workman, LLC Operating Account, month ending 5/31/10") as an objection to Exhibit 26. Plaintiffs mistakenly interpreted this typographical error as a lack of objection to Exhibit 23 and did not provide any response to Defendant's evidentiary objections or explanation for why the omission of Exhibit 23 from their disclosures was harmless.

**B. Defendant's Evidentiary Objections**

*1. Motion in Limine*

Although Defendant does not refer to the Motion as a "motion in limine," to the extent that the Motion argues that Plaintiffs' evidence should be excluded based on the Federal Rules of Evidence ("FRE"), this Court should address it as such. "A motion in limine is a request for the court's guidance concerning an evidentiary question. Judges have broad discretion when ruling on motions in limine." *Goodman v. Las Vegas Metro. Police Dep't*, 963 F.Supp.2d 1036, 1046 (D. Nev. 2013) (citing to *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984)).

"To exclude evidence on a motion in limine the evidence must be inadmissible on all potential grounds. Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context. This is because although rulings on motions in limine may save time, costs, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence." *Goodman*, 963 F.Supp.2d at 1047 (internal citations omitted). "[I]n limine rulings are not binding on the trial judge, and the judge may always change his mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n.3, 120 S.Ct. 1851, 1854 n.3, 146 L.Ed.2d 826 (2000).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

"Denial of a motion in limine does not necessarily mean that all evidence contemplated by the motion will be admitted to trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded." *Ellsworth v. Prison Health Servs. Inc.*, 2014 WL 1493018, at \*2 (D. Ariz. Apr. 16, 2014).

*1. Relevance*

Defendant has objected to Plaintiffs' Exhibits 1-88 on the grounds that they "do not provide evidence that tends to prove any fact of consequence." Plaintiff has presented a relevance argument for all exhibits except Exhibits 23, 56, 57, 71, 72 and 82. As explained below, each of Plaintiffs' exhibits appear to be relevant to at least one of their claims. It is premature for the Court to rule that any of Plaintiffs' exhibits are irrelevant at this time. (EN1)

- i. *Exhibits 1, 2, 58: LLC Agreements:* Plaintiffs argue that the LLC agreements establish Defendant's fiduciary duties as Chief Operating/Executive Officer of Mika Realty, which managed the Real Estate LLCs. Plaintiffs may use this evidence to establish Defendant's fiduciary duties, which is relevant to Plaintiffs' claim under 11 U.S.C. §523(a)(4). The Court will not exclude this evidence on relevance grounds at this time.
- ii. *Exhibits 3, 4: Tax Returns:* Plaintiffs assert that these tax returns show that Plaintiffs held an interest in the Real Estate LLCs and that Defendant therefore owed them a fiduciary duty, which appears relevant to support their § 523(a)(4) claim. The Court will not exclude this evidence on relevance grounds at this time.
- iii. *Exhibits 5, 6, 73: Property Management Agreements:* These agreements likely present further evidence of Defendants' fiduciary duties to members of the Real Estate LLCs. As such, they could be relevant to support Plaintiffs' 523(a)(4) claim. The Court will not exclude this evidence on relevance grounds at this time.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

- iv. *Exhibits 7, 9-17: Promissory Note, Assignment of Leases and Rents, Assignment of Note Ancillary Security Documents; Allonges; Recorded Deed of Trust/Security Agreement/Fixture Filing/Assignments of Lease and Rents; Omnibus Assignments; Assignment of Deed of Trust/Security Agreement/Fixture Filing/Assignment of Assignment of Lease and Rents:* Plaintiffs assert that these documents provide the basis of liability of Broadway/Workman to Wells Fargo and provide information regarding the nature and substance of Broadway/Workman's default. This information appears to support a claim of defalcation under § 523(a)(4). The Court will not exclude this evidence on relevance grounds at this time.
  
- v. *Exhibit 8: Recorded Deed of Trust/Security Agreement/Fixture Filing:* Plaintiffs plan to rely on this exhibit as evidence of Star News' liability to Wells Fargo, as well as information about the nature and substance of default, which Plaintiffs could use to support a claim of defalcation under § 523(a)(4). The Court will not exclude this evidence on relevance grounds at this time.
  
- vi. *Exhibit 20: Printout from website of LA County Collector:* Plaintiffs present this information to show Defendant's failure to pay LLC taxes, which they argue is a breach of his fiduciary duty and further evidence of defalcation. The Court will not exclude this evidence on relevance grounds at this time.
  
- vii. *Exhibits 24-26: Promissory Note; Deed of Trust of Rents, Security Agreement; Assignment of Leases and Rents:* Plaintiffs provide these exhibits as evidence of Star News' liability to Telesis, and the nature and substance of the default, which could support their defalcation claim. The Court will not exclude this evidence on relevance grounds at this time.
  
- viii. *Exhibits 30-31: Reeder Lu, LLP Client Funds Report; Check:* Plaintiffs

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

argue that these exhibits demonstrate that funds which Mika Realty was supposed to use to pay the mortgage on the Star News building instead were used for other purposes. This evidence tends to support Plaintiffs' claim under § 523(a)(4). The Court will not exclude this evidence on relevance grounds at this time.

- ix. *Exhibit 32: Promissory Note between Mohammed Islam and Mika Realty Group:* Plaintiffs claim that this note shows that Mika Realty used funds that should have been used for the benefit of Star News to cover liabilities not belonging to Star News. This evidence could support Plaintiffs' claims that Defendant committed fraud while acting in a fiduciary capacity. The Court will not exclude this evidence on relevance grounds at this time.
- x. *Exhibits 33-40: Promissory Note; Deed of Trust, Security Agreement and Fixture Filing; Assignment and Agreements, Permits and Contracts; Assignment of Leases and Rents; Assignment of Deed of Trust, Security Agreement and Fixture Filing; Assignment of Deed of Trust, Security Agreement, Fixture Filing and Other Loan Documents:* Plaintiffs assert that these exhibits show the basis of La Vergne Food Lion Partners' liability, and the nature and substance of its default. This evidence could be relevant to Plaintiffs' claim of defalcation. The Court will not exclude this evidence on relevance grounds at this time.
- xi. *Exhibits 47-52: Construction Loan Agreement; Promissory Note; Assignment of Rents; Commercial Security Agreement; Assignment of Loans:* Plaintiffs submit this exhibit to create a basis of liability for Covina Palms Center and the nature and substance of its default. Again, such evidence could be relevant to Plaintiffs' claim of defalcation. The Court will not exclude this evidence on relevance grounds at this time.
- xii. *Exhibits 74-79: Construction Loan Agreement; Construction Deed of*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

*Trust; Amendments to Promissory Note and Construction Loan Agreement; Assignment of Loans and Liens; Absolute Assignment of Mortgage and Loan Documents:* Plaintiffs assert that these documents present the basis of liability for York Square, and the nature and substance of its default. Such evidence could be used to support Plaintiff's claim of defalcation because it tends to demonstrate Defendant's mismanagement of the Real Estate LLCs. The Court will not exclude this evidence on relevance grounds at this time.

- xiii. *Exhibits 18-22, 27-29, 41-45: Bank Statements; Preliminary Payoff Quote; Year to Date Ledgers; Tax Returns; Monthly Management Report:* Plaintiffs plan to use this evidence to demonstrate that Defendant diverted funds away from the Real Estate LLCs and allowed them to go into default. Such evidence appears relevant to a § 523(a) (4) claim because it could demonstrate mismanagement of the Real Estate LLCs and defalcation. The Court will not exclude this evidence on relevance grounds at this time.
- xiv. *Exhibits 53-55: Check Registers; Summary of Payments Unrelated to the Property:* Plaintiffs argue that these records support their claims that Defendant diverted money held by the Real Estate LLCs to pay unrelated parties. This evidence could be used to support Plaintiffs' defalcation claim. The Court will not exclude this evidence on relevance grounds at this time.
- xv. *Exhibit 46: Wells Fargo Bank Wire Receipts:* Plaintiffs wired \$1,000,000 to pay for Covina Palms: Plaintiffs argue that this transfer draws a causal connection between their loss and Defendant's fraud. This evidence could be relevant to support any of Plaintiffs' § 523 claims. The Court will not exclude this evidence on relevance grounds at this time.
- xvi. *Exhibit 59: Modified Covina 18 Operating Agreement:* Plaintiffs argue that this operating agreement demonstrates that Defendant committed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

fraud in modifying the LLC agreement to reduce Plaintiffs' share. This evidence of fraud could be used to support a claim of fraud in a fiduciary capacity under § 523(a)(4), or willful and malicious injury under § 523(a)(6). The Court will not exclude this evidence on relevance grounds at this time.

- xvii. *Exhibit 60-61: Grant Deed; Buyer's Closing Statement:* Plaintiffs assert that these documents demonstrate that Defendant's fraud included attempting to transfer interest in a property owned by one of the Real Estate LLCs to another entity. This evidence appears relevant because it tends to support a claim of fraud under § 523(a)(4). The Court will not exclude this evidence on relevance grounds at this time.
- xviii. *Exhibits 62-63: Check; Namco Exchange Corp. Account Quick Report:* Plaintiffs argue that these documents show that Mr. Fox made a transfer that he believed was a loan. It is unclear which claim this information relates to, and whether these documents relate to any fact of consequence. Before hearing how Plaintiffs will use these exhibits, the Court will not exclude them.
- xix. *Exhibits 64-67: Grant Deed; Agreement of Purchase and Sale of Real Property; Email Thread; Receipt of Wire Transfer:* Plaintiffs plan to use these documents to demonstrate Defendant's attempt to transfer a property out of one of the Real Estate LLCs without their consent. Such evidence could support Plaintiffs' § 523(a)(4) claim. The Court will not exclude this evidence on relevance grounds at this time.
- xx. *Exhibit 68: Complaint for Damages:* Plaintiffs wish to present evidence that Kevin Golshan filed a complaint for damages against Mr. Fox. This evidence could potentially be used to show that Plaintiffs have been harmed by Defendant's actions. Before hearing how Plaintiffs will use this exhibit, the Court will not exclude it.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

- xxi. *Exhibits 69-70, 80: Emails; Forged Promissory Note:* Plaintiffs intend to use this evidence to show that Defendant willfully violated his fiduciary duty to Plaintiffs. Such evidence could be relevant to Plaintiffs' claims under § 523(a)(4) and (a)(6). The Court will not exclude this evidence on relevance grounds at this time.
  
- xxii. *Exhibit 81: Voluntary Petition for Relief Prepared in the York Square Bankruptcy Case:* Plaintiff intends to show that York Square filed for bankruptcy, which could support Plaintiffs' defalcation claim. The Court will not exclude this evidence on relevance grounds at this time.
  
- xxiii. *Exhibit 83: 22 Colt Lane Investors, LLC Limited Liability Operating Agreement:* Plaintiffs claim that Defendant forged Mr. Fox's signature on this document to establish an LLC for the purchase of his own home. It is unclear which claim this information relates to, but it could be relevant to support a claim that Defendant willfully and maliciously harmed Plaintiffs under § 523(a)(6). Before hearing how Plaintiffs will use this exhibit, the Court will not exclude it.
  
- xxiv. *Exhibit 84-85: Tax Return; Buyer's Estimated Settlement Statement:* Plaintiffs claim that these exhibits show that Defendant took funds from Plaintiffs to purchase his home that he never intended to repay. It is unclear which claim this evidence relates to, but it could be used to support Plaintiffs' § 523(a) claims. Before hearing how Plaintiffs will use these exhibits, the Court will not exclude them.
  
- xxv. *Exhibits 86-87: Mika Realty Group General Ledger; Operating Agreement:* Plaintiffs argue that these documents show that Defendant managed the Real Estate LLC bank accounts and that Defendant diverted funds to Mohammed Islam. This evidence could be relevant to support Plaintiffs' claims of fraud while acting in a fiduciary capacity



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

or defalcation. The Court will not exclude this evidence on relevance grounds at this time.

xxvi. *Exhibits 88-90: Transcript of Deposition of Ernest Charles Barreca:* Plaintiffs plan to use the deposition transcript to demonstrate that Defendant was responsible for reviewing the transactions of the Real Estate LLCs. This evidence tends to demonstrate Defendant's responsibilities as a fiduciary, and could be relevant to Plaintiffs' § 523 (a)(4) claim. The Court will not exclude this evidence on relevance grounds at this time.

*2. Lack of Foundation*

Defendant has objected to Exhibits 1-88 on the ground that they lack foundation and are unauthenticated. For the reasons explained below, the Court will defer any decision regarding admissibility based on lack of foundation until trial.

Pursuant to FRE 901, a proponent of an item of evidence must provide sufficient evidence to support a finding that the item is what the proponent claims it is. Such establishing evidence includes (but is not limited to): (1) testimony that the item is what it is claimed to be; (2) nonexpert opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation; (3) comparison with an authenticated specimen by an expert witness or the trier of fact; and (4) evidence that a document was recorded or filed in a public office as authorized by law or a purported public record or statement is from the office where items of this kind are kept. FRE 901(b).

A document also may be self-authenticating pursuant to FRE 902. Such documents include: (1) copies of public records which are certified as correct by a custodian or other person who is authorized to make the certification; (2) acknowledged documents which are executed by a notary public or other officer who is authorized to take acknowledgement; and (3) certified records generated by an electronic process or system. FRE 902 includes an exhaustive list of 14 kinds of documents which are self-authenticating.

As set forth in the Opposition, Plaintiffs intend to provide authentication for Exhibits

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

3-19, 21-22, 24-35, 41-50, 53-55, 63-70, 73-80, 83-87 through testimony at trial or via declaration. Because the Court cannot currently evaluate whether those exhibits are properly authenticated, it would be premature to rule on the related objections at this time.

Plaintiffs assert that Exhibits 1-2 and 58-59 can be authenticated by Mr. Fox's admission that he signed and entered into the agreements in those documents. Plaintiffs do not explain whether Plaintiff has already made this admission during discovery or if Plaintiff will need to submit a declaration to this effect. If Plaintiffs cannot provide such testimony, there may be another party who can authenticate these documents, and it is premature to exclude them for lack of foundation at this time.

Plaintiffs argue that Exhibits 10-17, 20, 25-26, 34-40, 49, 51-52, 60, 64, 75 and 81 are matters of public record, and are therefore self-authenticating pursuant to FRE 902(5). The majority of these documents appear to be grant deeds, assignments of rents, assignments of deeds of trust, and other documents which are likely recorded with a county recorder's office. Plaintiffs may be able to authenticate the documents as public records. Consequently, at this time, it is premature to exclude them for lack of foundation.

Plaintiffs also assert that they can obtain self-authenticating copies of Exhibits 48-52, 60-62, 67 and 74-79. These exhibits appear to include records such as loan documents, assignments of loans, promissory notes, a check and a wire transfer. Plaintiffs claim that they can subpoena the bank which keeps records of these documents to produce self-authenticating copies, presumably from their electronic records. Until the Court sees these records, it cannot rule on whether they are properly self-authenticating. The admissibility of these exhibits can be more easily determined at trial.

*3. Other Evidentiary Objections*

Defendant has objected to Plaintiffs' Exhibits 54-56, 66, 69-72, 82 and 88-90 on grounds other than relevance or lack of foundation.

*i. Argumentative/Mischaracterization of Exhibit*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Exhibit 54 is titled "Check Register by the Name of Payee in Order to Identify Payments which were Unrelated to the Property and which Represented Outright Theft of Rent"; Exhibit 55 is titled "Summary of All Payments which were Unrelated to the Property and which Represented Outright Theft of Rent"; and Exhibit 70 is titled "Forged Promissory Note." Defendant objects to Exhibits 54 and 55 on the grounds that each document is "argumentative in that it identifies payments unrelated to the subject property and asks the finder of fact to make conclusions unsupported by the evidence and, thus, serves to confuse or mislead the jury" [doc. 155, pp. 97-99]. Defendant objects to Exhibit 70 on the grounds that it "is argumentative in that it identifies an alleged forged signature without support and asks the finder of fact to make conclusions unsupported by the evidence, *i.e.* it identifies an apparent forgery without showing any nexus between the alleged forgery and Defendant's purported fraud, thus serving to confuse or mislead the jury" [doc. 155, pp. 121-122]. Defendant also states that these exhibits are "misidentified in name and content."

There is no jury in this case, and the Court is not concerned that it will be confused by Plaintiffs' exhibit titles. To the extent that Defendant takes issue with these titles, they can be revised to exclude the conclusory allegations. For example, Exhibit 54 can be re-named "Check Register Organized by the Name of Payee," Exhibit 55 can be re-named "Summary of Payments" and Exhibit 70 can be renamed "Putative Promissory Note." In any event, the Court will not exclude these exhibits based on Defendant's objection to their titles. As to Defendant's other articulated concerns, the Court will take them into account when it weighs the evidence.

*ii. Mischaracterization*

Defendant also contends that Plaintiffs mischaracterized Exhibits 66, 71, and 72. Exhibit 66 is titled "Email thread between Rick Barreca and Dwayne Butler." Defendant does not explain how this title is a mischaracterization of the exhibit. Exhibit 71 is titled "Left Blank," and Plaintiffs contend that it is blank for technical reasons. Defendant asserts that the exhibit is actually an operating agreement. The Court does not know the contents of the exhibit at this time, and consequently cannot determine whether the exhibit has been mischaracterized. Document 72 is titled "Operating Agreement of York Square LLC Dated as of November 19, 1996." Defendant contends that this exhibit actually includes a property management agreement. Again, the Court cannot determine the contents of an exhibit which has

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**      **Ernest Charles Barreca**  
not been provided to it.

**Chapter 7**

*iii. Argumentative*

Defendant objects to Exhibits 56 and 82 on the grounds that they are argumentative, are based on speculation, and present improper expert opinion. Plaintiff has withdrawn both Exhibit 56 and Exhibit 82, and these objections are therefore moot.

*iv. Improper Opinion*

Defendant also objects to Exhibits 69 and 70 on the grounds of improper opinion. Defendant claims that Exhibit 69, which includes an appraisal report, fails to set forth admissible evidence as to the principals or methods used for the appraisal and does not show any cognizable method used in developing accurate appraisal values. The Court is not in possession of this exhibit. At trial, the Court will rule on whether the appraisal report is admissible as an expert's opinion.

Similarly, Defendant objects to Exhibit 70, which allegedly constitutes a promissory note signed with Mr. Fox's name. Defendant anticipates that Mr. Fox will testify that the signature on the document is not his. Although Defendant contends that the accuracy of the signature requires the opinion of a handwriting expert, he has not cited any authority for this contention, and the Court will not exclude Exhibit 70 on this basis.

*v. Document Modified*

Defendant objects to Exhibit 70 because he states that the promissory note has been modified from the original document and its accuracy is in question. Plaintiffs do not respond to this allegation. The question of whether the document is in its original form goes to authentication. Prior to trial, it is premature for the Court to rule on the authentication of this document.

*vi. Hearsay/Incompleteness*

Deposition testimony generally is inadmissible hearsay at trial, but will be allowed under certain circumstances pursuant to FRCP 32. Deposition testimony is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

admissible: (1) as impeachment evidence; (2) if the deponent is unavailable to testify; or (3) if the deposition is an adverse party's testimony.

Defendant objects to Exhibits 88-90, which are portions of Defendant's deposition transcripts, on the grounds of hearsay and incompleteness. Plaintiffs have stated that they are willing to submit the entire deposition transcript as evidence. The entire deposition transcript appears to be admissible as an adverse party's former testimony under FRCP 32. Consequently, the Court will not exclude it as hearsay.

**C. Defendant's FRCP 26 Objections**

Pursuant to FRCP 26(a)(1), parties have a duty to disclose initially:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment....

Pursuant to FRCP 26(a)(1)(E)—

A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

"'Reasonably available' covers information known to a party, its agents and counsel, as well as information obtainable through *reasonable investigation*." Initial Disclosures, Rutter Group Prac. Guide Fed. Civ. Proc. Before Trial (Nat Ed.) Ch. 11 (II)-C (emphasis in original). "The rule does not demand an exhaustive investigation at this stage of the case, but one that is reasonable under the circumstances, focusing

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

on the facts that are alleged with particularity in the pleadings." Adv. Comm. Notes on 1993 Amendments to FRCP 26(a).

Pursuant to FRCP 26(e)(1)(A), "[a] party who has made a disclosure under FRCP 26 (a) – or who has responded to an interrogatory, request for production, or request for admission – must supplement or correct its disclosure or response...in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, *and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing*"(emphasis added).

"There is, however, no obligation to provide supplemental or corrective information that has been otherwise made known to the parties in writing or during the discovery process, as when a witness not previously disclosed is identified during the taking of a deposition or when an expert during a deposition corrects information contained in an earlier report." Adv. Comm. Notes on 1993 Amendments to FRCP 26. The disclosure requirements of FRCP 26(a)(1)(A) are designed to accelerate the exchange of basic information and "help focus the discovery that is needed, and facilitate preparation for trial or settlement." Id.

If a party fails to provide information or identify a witness as required by FRCP 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial unless the failure was substantially justified or harmless. FRCP 37(c)(1). This "provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence." Adv. Comm. Notes on 1993 Amendments to FRCP 26(a), *see Yeti By Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F3d 1101, 1106 (9th Cir. 2001); *NutraSweet Co. v. X-L Engineering Co.*, 227 F3d 776, 785-786 (7th Cir. 2000).

The Court has discretion to determine if a violation of FRCP 26(a) is "justified" or "harmless" based on several factors:

- (1) the surprise to the party against whom the evidence would be offered;
- (2) the ability of that party to cure the surprise;
- (3) the extent to which allowing the evidence would disrupt the trial;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

- (4) the importance of the evidence; and
- (5) the nondisclosing party's explanation for its failure to disclose the evidence.

*Dey, L.P. v. Ivax Pharmaceuticals, Inc.*, 233 F.R.D. 567, 571 (C.D. Cal. 2005) (citing *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592 (4th Cir. 2003)). *The party facing sanctions bears the burden of proving its failure to disclose the required information was substantially justified or harmless. R & R Sails, Inc. v. Insurance Co. of Penn.*, 673 F.3d 1240, 1246 (9th Cir. 2012). The Ninth Circuit Court of Appeals has held that a party's failure to disclose witnesses who are submitted merely to identify and authenticate documents at trial was harmless. *See Lam v. City of San Francisco*, 565 Fed. Appx. 641 (9th Cir. 2014).

Where evidence preclusion is extensive enough to amount to dismissal of a claim, the trial court must consider whether the claimed noncompliance involved willfulness, fault, or bad faith, and to consider whether lesser sanctions are available. *R & R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d 1240, 1247–48 (9th Cir. 2012). All that is required to demonstrate willfulness, fault or bad faith is "disobedient conduct not shown to be outside the control of the litigant." *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993).

A document's public availability does not excuse a party's failure to identify the documents during FRCP 26 disclosures. *See Low v. Trump Univ., LLC*, No. 310CV00940GPCWVG, 2016 WL 6647793, at \*8 (S.D. Cal. Nov. 10, 2016) ("Although a number of these exhibits were identified as publically available by [the] defendants, the fact that exhibits were publicly available does not justify [the] defendants' untimely disclosure"). Similarly, a party's awareness of a document or person does not justify nondisclosure under FRCP 26. *Ishow.com, Inc. v. Lennar Corp.*, No. C15-1550RSL, 2017 WL 2964875, at \*1–2 (W.D. Wash. July 12, 2017). In *Ishow*, the defendants did not identify seven of their potential witnesses until one month before trial. Although the plaintiff may have been aware of the existence of these individuals, the district court found that was irrelevant. To enable the plaintiff to craft its discovery efforts, the defendants were required to disclose their intention to rely on the testimony of these witnesses at trial.

In addition, although a person may be mentioned during discovery in a way that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT... Ernest Charles Barreca

Chapter 7

suggests their possession of relevant information ("Jones was also present during my conversation with defendant"), such a reference does not take the place of disclosing that the party may use that person to support their claims or defenses. *See* Adv. Comm. Notes to 1993 Amendments to FRCP 26(a), and *Ollier v. Sweetwater Union High School Dist.*, 267 FRD 339, 343 (S.D. Cal. 2010).

Rather than excluding evidence, some courts have allowed less drastic sanctions, such as reopening discovery to permit the opposing side to conduct the discovery they otherwise would have performed, *i.e.*, to provide the opposing side with an opportunity to gather rebuttal evidence. *Bonzani v. Shinseki*, No. 2:11-CV-0007-EFB, 2014 WL 66529, at \*4–5 (E.D. Cal. Jan. 8, 2014) (reopening discovery and ordering the nondisclosing party to pay reasonable expenses incurred in bringing the motion to exclude evidence); *Rhodes v. Sutter Health*, 949 F. Supp. 2d 997, 1010–11 (E.D. Cal. 2013); *see also CCR/AG Showcase Phase I Owner, L.L.C. v. United Artists Theatre Circuit, Inc.*, No. 208-CV-00984-R CJ-GWF, 2010 WL 1947016, at \*12 (D. Nev. May 13, 2010) (ordering defendant to pay court reporter fees and plaintiffs' attorney's fees to prepare and to conduct further depositions). This remedy may be appropriate where reopening discovery is in the interests of a full and fair proceeding. *See City of Inglewood v. Time Warner NY Cable LLC*, No. CV1309464BROCWX, 2015 WL 12803767, at \*5 (C.D. Cal. June 9, 2015).

**1. Exhibits**

Defendant objects to Plaintiffs' Exhibits 1-56 and 58-87 (*i.e.* all except 57, 88-90) because they were not properly identified at the FRCP 26 disclosure conference or at any time during discovery. Plaintiffs admit that they failed to provide supplemental disclosures as required by FRCP 26(a), but argue that this failure was harmless. According to Plaintiffs, there is no surprise to Defendant because Plaintiffs identified their exhibits to the Defendant in or before June 2017, and Defendant has been aware of them for several months. In addition, Plaintiffs argue that precluding the evidence would essentially eviscerate Plaintiffs' claims.

Plaintiffs also state that they are "merely presenting evidence that [they have] already presented in the State Court Action that led to Plaintiffs obtaining a default Judgment" [doc. 145, p. 4]. Plaintiffs have not presented the Court with their motion for default judgment from the State Court Action and the related proof of service. Thus the Court



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

cannot evaluate whether that motion sufficiently disclosed the intended use of the exhibits at issue to Defendant.

Plaintiffs argue that they otherwise have identified most, if not all, of the evidence to Defendant earlier in the adversary proceeding, as follows:

*i. Delivered at Defendant's Deposition on April 25, 2017*

Plaintiffs contend that they delivered Exhibits 28 (2010 Year to Date Ledger for Star News) and 42 (La Vergne Food Lion Partners 2010 Year to Date Ledger) to Defendant during Defendant's deposition on April 25, 2017. If these documents were delivered during discovery, and in writing, Plaintiffs were not required to supplement their disclosures with Exhibits 28 and 42. However, Plaintiffs have not presented the Court with any evidence that they delivered the documents as they contend.

*ii. Identified on May 20, 2017 in Plaintiff's Initial Exhibit List*

Plaintiffs state that they identified Exhibits 1-22, 24-27, 29-41, 43-55, 58-70, 73-81 and 83-87 in their initial exhibit list on May 20, 2017, after discovery closed on April 26, 2018. As discussed above, the Ninth Circuit Court of Appeals has held that where a party identified documents after the close of discovery, the failure to provide disclosure earlier is not harmless. The purpose of FRCP 26 is to help parties shape their discovery efforts. Moreover, Plaintiffs have not presented an adequate argument that their lack of timely disclosure was substantially justified.

*iii. Delivered to Plaintiffs by Richard Laski*

Plaintiffs assert that Exhibits 3-4, 21-22, 27, 41, 44-45, 83-84 are documents that Richard Laski delivered to Defendant, pursuant to Plaintiffs' request. Plaintiffs do not specify when these documents were delivered, nor do they put forth any evidence to this effect.

*iv. Included in the IPS on May 31, 2017 [doc. 99]*

Plaintiffs also assert that they identified Exhibits 2, 8, 11, 14, 17, 24, 32-33, 46, 48, 56, 61-62, 64-65, 67-70, 80, 83 and 85 in the IPS. A side-by-side comparison of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT... Ernest Charles Barreca

Chapter 7

JPS and IPS, as set forth in the chart below, does not necessarily support Plaintiffs' contention.

JPS Exhibit Number and Name	IPS Exhibit Number and Name
2: "Limited Liability Company Agreement of Covina Palms Center, LLC"	53: "Amended Limited Liability Company Agreement of Covina Palms Center dated June 21, 2007"
8: "Recorded Deed of Trust/Security Agreement/Fixture Filing" and 64: "Grant Deed"	Possibly 46: "Grant Deed between Covina Palms, LLC and Covina 18, LLC recorded on 1/31/08"
11: "Allonge", 14: "Allonge" and 17: "Allonge"	Possibly 52: "Allonge memorializing JRSL Fam 1, LLC purchase of Covina Palms Center Note to First National Bank of Arizona"
24: "Promissory Note", 32: "Promissory Note", 33: "Promissory Note", 48: "Promissory Note" and 70 "Forged Promissory Note"	Possibly 54: "Promissory Note dated 2/4/08 for \$1,000,000.00 between Kevin Golshan, Michael J. Kamen and Gerson Fox"
46: "Wire Receipts" and 67: "Receipt of Wire Transfer"	Possibly 5, 7, 8, 9, 19 or 48 all of which are "Receipts of Wire Instructions" from various transfers.
56: "Declaration of Jack Garret in Support of Default Judgment"	57: "Declaration of Jack Garret in Support of Default Judgment <i>Fox et. al v. Barreca et. al</i> Case No. LC 100200"
61: "Buyer's Closing Statement"	Possibly 44: "Buyer's Final Closing Statement 2211-49 Garvey Blvd., West Covina, CA dated 12/13/07"
62: "Copy of Check dated 12/27/07"	Possibly 4: "Copies of Checks from made payable to La Vergne Food Lion Partners, LLC from Gerson Fox's Bank of America Account between 9/11/07 and 8/20/08"
65: "Agreement of Purchase and Sale between Covina 18, LLC and Kevin Golshan"	45: "Agreement for Purchase and Sale of Real Property between Covina 18, LLC and Kevin Golshan dated 12/15/07"

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT... Ernest Charles Barreca

Chapter 7

68: "Complaint for Damages"	Possibly 28 or 39, which are each complaints including claims for specific performance and breach of guarantee.
69: "Email chain between April Herrera and Kevin Golshan and appraisal which is attached"	55: "Email chain ending with email from April Herrera to Kevin Golshan dated June 1, 2009 with attached Appraisal of Garvey Property"
80: "Email Generated by Defendant"	Possibly 61 or 63, each of which are emails.
83: "22 Colt Lane Investors, LLC Limited Liability Operating Agreement"	66: "22 Colt Lane Investors LLC Limited Liability Company Operating Agreement"
85: "Buyer's Estimated Settlement Statement"	Possibly 62 "Closing Statement for Colt Lane Property" or 44 "Buyer's Final Closing Statement 2211-49 Garvey Blvd., West Covina CA dated 12/13/07"

Although Plaintiffs state that certain exhibits were referenced in both documents, the inconsistency in the exhibits' titles impedes this argument. Based on the descriptions, it appears that the following exhibits identified in the JPS also were included in the IPS: Exhibits 2, 56, 61, 65, 69, and 83. If these documents were included in the IPS in May 2017, that date was after discovery closed on April 26, 2018. Consequently, such a failure is not "harmless."

*v. Included in Plaintiffs' Opposition to the MSJ on June 21, 2017*

Plaintiffs argue that Exhibits 2, 4, 18, 29, 30, 31, 32, 43, 53-55 and 58, as described in the chart below, were served on the Defendant through the Plaintiffs' opposition to the MSJ and declaration in support of that opposition (filed on June 21, 2017). Plaintiffs state that Defendant has had possession of the actual exhibits since that time.

JPS Exhibit Number	Opposition to MSJ [doc. 104]	Declaration in Support of Opposition to MSJ [doc. 105]
2: "Limited Liability Company Agreement of Covina Palms Center, LLC"		Exh. J: Limited Liability Company Agreement of Covina Palms Center, LLC"

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

5: "Property management Agreement (Broadway Workman, LLC)"		Exh. A: "Property Management Agreement" between Mika Realty and Broadway/Workman, LLC
18: "Bank Statements of Broadway Workman, LLC Operating Account 9/30/10-3/30/11"		Exh. B, C and D contain Broadway Workman's bank statements from January through March 2011
21: "Year to date Ledger 2011-Accrual", 28: "2010 Year to Date Ledger-Accrual-Star News Building, LP", and 42 "La Vergne Food Lion Partners, LLC 2010 Year to date Ledger"		Possibly Exh. E "Year to Date Ledger- Accrual"
29: "Bank Statements for Star News, LP Operating Account 1/11/10-3/31/10"		Exh. F contains Star News Building's bank statements from January through the end of March 2010.
31: "Copy of \$150,000.00 check made payable to Mohammed Islam"	Probably contained in Exhibit L, which is a declaration of Mr. Islam from a prior case, including a \$150,000.00 check.	
32: "Promissory Note"	Probably contained in Exhibit L, which includes a Promissory Note for the \$150,000.00 check.	
43: "La Vergne Food Lions Partners, LLC Bank Statements 9/2010-12/31/10"		Exh. I contains La Vergne Food Lions Partners, LLC's bank statements from September 2010-December 2010

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

53: "Check register of Covina Palms Center, LLC, sorted by check number for the period January 12, 2009 through July 28, 2010"	Exhibit R contains, as Exhibit F1, a check register for Mika Realty covering the relevant time period. January 2009 through March 2011.	
54: "Check register by the name of the payee in order to identify payments which were unrelated to the property and which represented outright theft of rent."	Exhibit R contains, as Exhibit F2, a check register organized by the payee names.	
55: "Summary of all the payments which were unrelated to the property and which represented outright theft of rent."	Possibly Exhibit R, which contains, as Exhibit F3, a list of payments, some of which appear to be related to property, some of which do not.	
58 "Covina 18, LLC Operating Agreement"		Not included. Plaintiff refers to Exhibit J to doc. 105, but Exhibit J is an operating agreement for Covina Palms Center, LLC.

Plaintiffs also claim that Exhibits 33-40 and 47-52 were included in the opposition to the MSJ. However, these exhibits were not included in either docket 104 or 105. It appears these documents were exhibits to a motion filed in the La Vergne Food Lions Partners, LLC bankruptcy case. Although that motion was included in docket 104 as Exhibit Q, the exhibits to the motion were not attached.

Exhibits 2, 5, 29, 31, 32, 43 and 53-55 appear to have been included in Plaintiffs' opposition to the MSJ. These documents were not identified to Defendant in compliance with FRCP 26, and Plaintiffs' failure to disclose them explicitly before the close of discovery was not harmless. However, when the opposition to the MSJ was filed, Defendant did not object to the use of these exhibits or subsequently move to reopen discovery.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

*vi. Matter of Public Record*

Plaintiffs argue that Defendant should have been aware of Exhibits 7-17, 19, 24-26, 29-40, 47-55, 68, 74-79, 81 and 86-87 because these exhibits each are a matter of public record [doc. 160, example on p. 4, lines 20-23]. The purpose of FRCP 26 is for parties to inform each other of the evidence they intend to use to support their cases in order to promote efficiency in trying or settling cases. The fact that a document is a public record does not provide such notice. *See Trump Univ.*, 2016 WL 6647793, at \* 8. However, as noted above, Plaintiffs included Exhibits 29, 31, 32, 53, 54 and 55 in their opposition to the MSJ. Because Defendant could have been properly prepared as to those exhibits, as discussed below, the Court will not exclude them.

*vii. Documents which Defendant Signed, Created, or Received*

Plaintiffs argue that the Defendant should be aware of Exhibits 64-70, 80 and 83-85 because they are documents he created, signed, or received or were prepared at his direction. As discussed above, such an argument is inconsistent with the congressional intention behind FRCP 26. The rule is intended to encourage parties to identify the evidence on which they plan to rely to present their case. Defendant's knowledge of the existence of these documents did not relieve Plaintiffs from their FRCP 26 obligations. However, as noted above, Plaintiffs included Exhibits 65, 69 and 83 in the IPS. Consequently, the Court concludes that Defendant could have been properly prepared as to those exhibits, and, as discussed below, it will not exclude them.

*viii. Defendant Should be Aware of Certain Documents*

Plaintiffs argue that it is disingenuous for the Chief Operating/Executive Officer of the company which created Exhibits 3-4, 6, 46 and 84-85 to argue that he did not have access to these documents. Defendant's knowledge of these documents does not absolve Plaintiffs of the FRCP 26 disclosure requirement. Plaintiffs did not include any of these exhibits in their opposition to the MSJ or the IPS. Absent further evidence that Plaintiffs pointed them out to Defendant earlier in this proceeding, the Court will exclude them.

*ix. Evidence Will Identify Transfers Denoted in Other Exhibits*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Plaintiffs state that Exhibits 21, 22, 27 and 41, which include a year to date ledger from 2010, and 2010 tax returns for Broadway/Workman LLC, Star News LP, and La Vergne Food Lion Partners LLC (the "Supportive Exhibits"), will identify transfers evidenced by other exhibits. According to Plaintiffs, Exhibits 21 and 22 identify transfers already described in Exhibit 18, Exhibit 27 identifies transfers evidenced in Exhibits 28 and 29, and Exhibit 41 identifies transfers evidenced in Exhibits 42 and 43.

The Supportive Exhibits were neither identified in the IPS or the opposition to the MSJ, and Defendant would not have been alerted that Plaintiffs intended to rely on them. Consequently, absent further evidence that Plaintiffs sufficiently identified them to Defendant earlier in the proceeding, the Court will exclude them.

*x. Documents Available through PACER*

Plaintiffs assert that Exhibit 81, the voluntary petition for relief in the York Square, LLC bankruptcy, is available via PACER and Defendant has had access to it for the duration of the case. For reasons similar to those discussed above, a document's availability through PACER does not excuse disclosure of the document under FRCP 26. This exhibit was not included in the IPS or the opposition to the MSJ. Absent further evidence that Plaintiffs pointed it out to Defendant earlier in the proceeding, the Court will exclude it.

*2. Witnesses*

Defendant objects to the use of Kevin Golshan, Jack Garrett, Richard Laski, Benjamin Nachimson, David Frank, Mohammed Islam and Peter Meherian (the "Disputed Witnesses") as witnesses because the Disputed Witnesses were not included in Plaintiffs' initial disclosures. In the Opposition, Plaintiffs contend that Defendant had notice that some of the Disputed Witnesses were important to the case, though Plaintiffs do not deny that they did not provide Defendant with their names through FRCP 26 disclosures.

The IPS [doc. 99, pp. 48-49] listed Kevin Golshan, Jack Garret, David Frank, Mohammad Islam and Peter Meharian as potential witnesses for Plaintiffs. According to the JPS, Plaintiffs intend to use each of these witnesses to provide substantive

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 23, 2018

Hearing Room 301

1:30 PM

CONT... Ernest Charles Barreca

Chapter 7

information. Well before trial, Defendant was aware of their identities and potential status as witnesses. Because Defendant had ample time to request that discovery be reopened in this case, lesser sanctions are appropriate.

The other two witnesses, Benjamin Nachimson, Plaintiffs' attorney, and Richard Laski, were not identified as witnesses in any document on the docket prior to the JPS. It appears that Plaintiffs intend to use both Nachimson and Laski's testimony only to identify certain documents. As such, pursuant to the Ninth Circuit Court of Appeals' holding in *Lam v. City of San Francisco*, allowing these witnesses to provide this testimony, despite Plaintiffs' failure to disclose them earlier, is harmless. Consequently, the Court will allow the testimony of Nachimson and Laski for the purpose of identifying and authenticating documents.

*3. Appropriate Sanctions*

The purpose of FRCP 26 is to help facilitate discovery to expedite the process of collecting evidence, and it should not be viewed as a procedural weapon through which parties seek to gain a tactical litigation advantage. *Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 243 (D. Nev. 2017), *see also* Advisory Committee Notes to 1993 Amendments to Fed.R.Civ.P. 26(a). Defendant has objected to seven of Plaintiffs' nine witnesses and Exhibits 1-56 and 58-87 (*i.e.* all except 57, 88-90). If the Court sustains Defendant's objection and precludes the evidence on FRCP 26 grounds, the result would be tantamount to a dismissal of Plaintiffs' case. Given the likely dispositive nature of such a sanction, the Court must consider whether a lesser remedy is available.

Other courts have looked unfavorably upon litigants who had knowledge of a party's proposed use of exhibits but waited months before filing their FRCP 26 objections. In *Perfumania, Inc. v. Fashion Outlet of Las Vegas, LLC*, the defendant waited a year after discovery closed, and well after the plaintiff made certain documents available to the defendant, to try to preclude the plaintiff from relying on those documents as evidence. *Perfumania, Inc. v. Fashion Outlet of Las Vegas, LLC*, No. 2:05-CV-00054-ECR, 2006 WL 3040914, at \*1-2 (D. Nev. Oct. 26, 2006). There, the district court found that defendant could not blame the plaintiff for their own lack of diligence in seeking the discovery they needed.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Here, Plaintiffs state that nondisclosure was a procedural oversight, and claim to have identified the vast majority of their exhibits in or before June 2017. Although this was after the close of discovery, it was long before trial was set in this case. Of the exhibits and witnesses Defendant has objected to on FRCP 26 grounds, Plaintiffs identified and/or provided Exhibits 2, 5, 29, 31, 32, 43, 53-56, 61, 65, 69 and 83 in the IPS or in Plaintiffs' opposition to the MSJ, and witnesses Jack Garret, David Frank, Kevin Golshan, Mohammad Islam and Peter Meharian were identified in the IPS. As to the exhibits and witnesses that Plaintiffs identified in or before June 2017, it appears disingenuous for Defendant to argue that he was deprived of discovery. After becoming aware of Plaintiffs' use or intended use of these exhibits or witnesses, Defendant did not move to reopen discovery or object to the use of the exhibits in connection with the MSJ. If he had, the Court could have dealt with the situation without disrupting the trial schedule. Consequently, Defendant's delay appears to be a litigation tactic.

In light of Defendant's apparent gamesmanship, and because Plaintiffs claim that, in or before June 2017, they identified a vast majority of their exhibits to Defendant for this proceeding, the Court will impose lesser sanctions. First, the Court will not exclude the Disputed Witnesses. Second, if Plaintiffs present evidence that Plaintiffs sufficiently identified or provided exhibits to Defendant in or before June 2017, the Court will not exclude those exhibits. Because Plaintiffs' conduct led to Defendant incurring the expense of bringing the Motion, the Court will award Defendant his reasonable attorney's fees in bringing the Motion. *See Bonzani*, 2014 WL 66529, at \* 5.

### **III. CONCLUSION**

As discussed above, at this time the Court will not rule that any of Plaintiffs' evidence is inadmissible pursuant to Defendant's evidentiary objections.

Plaintiffs have demonstrated that they sufficiently identified Exhibits 2, 5, 29, 31, 32, 43, 53-55, 61, 65, 69, 83 through the ISP or the opposition to the MSJ. Plaintiffs assert that they also sufficiently identified Exhibits 1, 3-4, 6-28, 30, 33-42, 44-52, 58-60, 62-64, 66-68, 70, 73-81 and 84-87 (the "Additional Exhibits"). (EN2)

The Court will continue this hearing to **April 4, 2018 at 2:30 p.m.** No later than

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**March 30, 2018**, Plaintiffs must submit a supplemental declaration evidencing that, in or before June 2017, they identified or provided the Additional Exhibits to Defendant in connection with this proceeding. No later than **April 3, 2018**, Defendant must file any response to the supplemental declaration.

Plaintiffs failed to make proper disclosures with regard to the Disputed Witnesses. Plaintiffs' failure to identify Mr. Nachimson and Mr. Laski was harmless, and the Court will allow their authentication testimony. Regarding Plaintiffs' failure to provide FRCP 26 disclosures as to Kevin Golshan, Jack Garrett, David Frank, Mohammed Islam and Peter Meherian, the Court will reopen discovery prior to trial solely to allow Defendant to depose these individuals.

In addition, Plaintiffs must pay Defendant's attorney's fees incurred in preparing the Motion. No later than **March 30, 2018**, Defendant must submit evidence of the attorney's fees which he incurred to do so.

**ENDNOTES**

1. However, based on Defendant's FRCP 26 objections, evidence which may be relevant may nevertheless be excluded.
2. Plaintiffs have withdrawn Exhibits 56, 57, 72 and 82, and contend that Exhibit 71 was left blank. Defendant did not object to Exhibits 88-90 on FRCP 26 grounds.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#2.00** Status conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18

Docket 12

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 23, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, March 27, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13428 Michael Rodriguez**

**Chapter 13**

**#1.00** Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION  
VS  
DEBTOR

[EVIDENTIARY HEARING]

fr. 1/10/18; 1/17/18, Stip 2/26/18

**Stipulation resolving relief from stay filed 3/1/18**

Docket 18

**\*\*\* VACATED \*\*\* REASON: Vacated per order entered 3/2/18.**

**Party Information**

**Debtor(s):**

Michael Rodriguez

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#1.00** Motion for relief from stay [AN]

MEHRDAD (MAX) VAFI  
VS  
DEBTOR

fr. 2/21/18

Docket 93

**Tentative Ruling:**

At the prior hearing, the Court instructed movant to serve notice of the continued hearing on the chapter 11 trustee (the "Trustee"). On February 28, 2018, movant served notice of the continued hearing on the Trustee [doc. 128].

On February 22, 2018, the Trustee filed a notice of non-opposition to the motion and submission to the Court's ruling [doc. 123].

In light of the foregoing, the Court will grant the motion pursuant to its prior ruling.

**Ruling from 2/21/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant may proceed under applicable nonbankruptcy law to proceed to final judgment in the nonbankruptcy forum, and the parties will have relief to prosecute any appeal of an entered judgment, provided that the stay remains in effect with respect to enforcement of any judgment against the debtor or property of the debtor's bankruptcy estate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Movant(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10241 Khachik Julfayan**

**Chapter 7**

**#2.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Khachik Julfayan

Represented By  
David S Hagen

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:18-10243 Patricia Huerta Curiel

Chapter 7

#3.00 Motion for relief from stay [PP]

VEROS CREDIT, LLC  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Patricia Huerta Curiel

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10395 Juan Moises Morales Galvez**

**Chapter 7**

**#3.10** Motion for relief from stay [UD]

BOB WHITMAN, TRUSTEE KATALINA WHITMAN TRUST  
VS  
DEBTOR

fr. 3/14/18

Docket 5

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On April 23, 2000, movant and the debtor entered into a lease agreement as to the real property located at 7522 Cartwright Ave., Sun Valley, CA 91352 (the "Property"). The lease provides, in pertinent part:

The tenants hereby agree not to commit or permit any illegal acts on said premises or cause any nuisance or cause damage to the above property, or to the appurtenances thereto, or create an unreasonable interference with the comfort, safety or enjoyment of any of the other residents at the same time or any adjacent buildings or homes. The tenants further agree not to use the residence for any illegal purpose.

(Motion, Exh. A.) The lease contains no provisions regarding rent control ordinances.

On November 26, 2017, movant served a Notice to Quit on the debtor (the "Notice to Quit"). (Motion, Exh. B.) The Notice to Quit states that the debtor had violated the terms of the lease agreement by (i) storing personal property in the front yard of the Property and other outside areas; and (ii) using the Property to conduct a business. Attached to the Notice to Quit is a letter from the Office of the City Attorney of Los

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

CONT... **Juan Moises Morales Galvez**

Chapter 7

Angeles describing a zoning code violation as to the Property.

On December 11, 2017, movant filed an unlawful detainer complaint (the “UD Complaint”) in state court against the debtor and other occupants of the Property. (Motion, Exh. C.) A trial on the UD Complaint was set for February 14, 2018 (the “UD Trial”). (Unlawful Detainer Declaration (“UD Decl.”), ¶ 7c.(2)) On February 14, 2018, the debtor filed his chapter 7 petition, commencing this case (the “Case”).

**A. The Pending Motion**

On February 15, 2018, movant filed the pending motion [doc. 5]. Movant alleges that the debtor did not pay the monthly rent of \$1,297 beginning on December 1, 2017. (UD Decl., ¶ 6a.) Movant alleges that the debtor did not file and serve on the movant the certification required under 11 U.S.C. § 362(l)(1), and that the debtor or adult dependent of the debtor did not deposit with the clerk any rent that would become due during the 30-day period after the filing of the petition. (*Id.*, ¶ 7d.(1), (2).) Movant also alleges that the UD Trial was continued to March 14, 2018. (*Id.*, ¶ 7c.(3).)

**B. The Opposition**

On February 28, 2018, the debtor filed his opposition [doc. 12]. The debtor did not attach a declaration signed under penalty of perjury in support of the opposition. The debtor stated that he has lived as a tenant for at least 25 years at the Property, which is rent-controlled. The debtor states that he cured movant’s alleged code violations. The debtor also states that he sought to pay rent, but rent was refused by the movant. The debtor disputes movant’s allegations that the debtor has not filed a certification pursuant to § 362(l)(1) and that the debtor has not deposited rent with the Court.

In addition, the debtor states that he will assume the existing lease under 11 U.S.C. § 365(b)(1)(A) and cure the default, if any. The debtor also argues that because the unit is rent-controlled, it is a form of public assistance and therefore exempt under California Code of Civil Procedure § 703.140(b)(1) and 11 U.S.C. § 522(b)(10)(A). In support of the assertion that rent control is public assistance benefit, the debtor cites *Santiago-Monteverde v. Pereira (In re Santiago-Monteverde)*, 780 F.3d 126 (2d Cir. 2015) and *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129 (1976).

The debtor cites *In re Uniq Shoes Corp.*, 316 B.R. 748 (Bankr. S.D. Fla. 2004) for the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

CONT... **Juan Moises Morales Galvez**

Chapter 7

proposition that courts consider “several factors, including a debtor's past financial performance, any inequitable conduct engaged in by the non-debtor party, and the remaining term of a lease or relationship between the parties” to determine whether a cure is prompt under § 365(b)(1).

The debtor further states that pursuant to 11 U.S.C. § 362(e)(2), in cases where the debtor is an individual, the stay will terminate 60 days after a motion for relief from stay is filed, unless a final decision is rendered by the court during the 60-day period, or the 60-day period is extended by agreement of the parties or upon a finding of good cause by the court.

Furthermore, the debtor states that movant has acted inequitably by filing his motion the day after the petition date. According to the debtor, section 362(l) “provides the [d]ebtor a 30-day period during which the default may be cured.”

**II. DISCUSSION**

**A. 11 U.S.C. §§ 362(b)(22) and 362(l)**

As an initial matter, §§ 362(b)(22) and 362(l) do not apply to the Case. Section 362 (b)(22) provides that the filing of a petition does not operate as a stay:

subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement ***and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor*** [.]

(Emphasis added.)

Section 362(l)(1) provides:

Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

CONT...

**Juan Moises Morales Galvez**

Chapter 7

serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the *judgment for possession, after that judgment for possession was entered*; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(Emphasis added.)

Here, the UD Trial was initially set for February 14, 2018 and continued to March 14, 2018. The debtor filed his petition on February 14, 2018. It does not appear that any judgment for possession of the Property was entered prepetition, such that the § 362(b)(22) exception to the automatic stay would apply as of the petition date. Because § 362(b)(22) does not apply in the Case, the requirements of § 362(l) also do not apply in the Case. In addition, § 362(l) addresses the cure of monetary defaults. However, the default alleged by movant is nonmonetary in nature.

**B. 11 U.S.C. § 365**

In addition, it does not appear that the monetary cure provisions of 11 U.S.C. § 365(b)(1) apply to the lease at issue. Section 365(b)(1) provides:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

CONT...

**Juan Moises Morales Galvez**

**Chapter 7**

assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

Movant alleges that the debtor did not pay the monthly rent of \$1,297 beginning on December 1, 2017. Movant served the Notice to Quit on November 26, 2017, five days before the alleged failure to pay rent. The Notice to Quit states that the debtor's defaults are nonmonetary in nature, *e.g.*, storing personal property in the front yard of the Property and other outside areas; and using the Property to conduct a business. Based on the Notice to Quit, it does not appear that the monetary default cure provisions of § 365(b)(1) apply to the lease at issue.

The debtor argues that he will assume the existing lease under 11 U.S.C. § 365(b)(1) (A) and cure the default, if any. The debtor states that he has tried to pay rent to movant, but movant would not accept payment. The debtor also states that he has cured the alleged, nonmonetary code violations. However, these statements are not supported by declaration or other admissible evidence.

In any event, the debtor does not have standing to assume or reject a lease under 11 U.S.C. § 365. "The decision to assume or reject a lease in a Chapter 7 setting is solely the trustee's for a sixty day period only." *Carrico v. Tompkins (In re Tompkins)*, 95 B.R. 722, 724 (9th Cir. B.A.P. 1989) (citing 11 U.S.C. § 365(d)(1)).

**C. Rent Control**

The debtor states that his lease is subject to a Los Angeles County rent control

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Juan Moises Morales Galvez**

**Chapter 7**

ordinance. However, this statement is not supported by declaration or other admissible evidence. Even if the Property were subject to a rent control ordinance, the debtor's cited authorities do not support denial of the pending motion.

The debtor argues that rent control is a form of public assistance that is "exempt" under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(1) and 11 U.S.C. § 522(b)(10)(A). C.C.P. § 703.140(b)(1) provides that a judgment debtor may exempt the "aggregate interest, not to exceed [\$26,800] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence." However, this statute addresses homestead exemptions, not rent-controlled lease agreements.

11 U.S.C. § 522(b)(10)(A) provides that a debtor may exempt the "right to receive . . . a social security benefit, unemployment compensation, or a local public assistance benefit[.]" The debtor cites *In re Santiago-Monteverde* to support his assertion that rent control is a public assistance benefit. However, *In re Santiago-Monteverde* concerns a rent-stabilized lease that the Second Circuit Court of Appeals held to be a "local public assistance benefit" under New York state law and therefore exempt under 11 U.S.C. § 522. 780 F.3d at 128. The debtor has not provided authority that the Los Angeles County rent control ordinance is a "local public assistance benefit" under California law, and that the lease at issue is similarly exempt.

The debtor also cites *Birkenfeld*. In *Birkenfeld*, the California Supreme Court held that a municipality's enacted rent control provisions "are within the police power if they are reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property." 17 Cal. 3d at 165. However, *Birkenfeld* did not address whether a debtor could claim an exemption in a rent-controlled lease as a defense to a motion for relief from the automatic stay.

**D. 11 U.S.C. § 362(e)**

In his opposition, the debtor cites § 362(e)(2). However, this statute concerns the expiration of the automatic stay 60 days after the filing of a motion for relief of the automatic stay. Section 362(e)(2) does not support denial of the pending motion.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Juan Moises Morales Galvez  
III. CONCLUSION**

**Chapter 7**

In light of the foregoing, the Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The Court will deny the movant's request for an order confirming that the automatic stay does not apply pursuant to 11 U.S.C. § 362(l). Section 362(l) is inapplicable here, as movant has not obtained a prepetition judgment for possession of the Property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Juan Moises Morales Galvez	Pro Se
----------------------------	--------

**Trustee(s):**

David Keith Gottlieb (TR)	Pro Se
---------------------------	--------

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:18-10479 Jeff Reyes

Chapter 13

#4.00 Motion for relief from stay [UD]

PALMER TEMPLE STREET PROPERTIES  
VS  
DEBTOR

**Case dismissed 3/13/18**

Docket 7

\*\*\* VACATED \*\*\* REASON: Case dismissed on 3/13/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jeff Reyes

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:17-11588 Christopher Ivo Joseph Silveira

Chapter 13

#5.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.  
VS  
DEBTOR

Docket 23

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Christopher Ivo Joseph Silveira

Represented By  
William G Cort

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#6.00 Motion for relief from stay [PP]

CAB WEST, LLC  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Taghreed Yaghnam

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

9:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

#7.00 Motion for relief from stay [PP]

ALLY FINANCIAL, INC.  
VS  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Benjawan Rachapaetayakom

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:14-14532 Juan Jose Medrano

Chapter 13

#8.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

Docket 120

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan Jose Medrano

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#9.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.  
VS  
DEBTOR

Docket 45

\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 3/26/18 [Dkt.49]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gerald E Klein

Represented By  
David R Hagen

**Joint Debtor(s):**

Norma L Klein

Represented By  
David R Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, March 28, 2018

Hearing Room 301

9:30 AM

1:18-10465 Ziv Kanon

Chapter 13

#10.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 8

\*\*\* VACATED \*\*\* REASON: Voluntary Dismissal of Motion filed 03/22/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

1:30 PM

**1:15-11434 YKA Industries Inc a California Corporation**

**Chapter 7**

Adv#: 1:17-01039 GOLDMAN v. Krayndler et al

**#11.00** Order to show cause why this adversary proceeding should not be dismissed

Docket 14

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 3/22/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

YKA Industries Inc a California

Represented By  
G Bryan Brannan

**Defendant(s):**

Andrew Krayndler

Represented By  
Eric C Schreiber

Erika Krayndler

Represented By  
Eric C Schreiber

LNA Builders

Represented By  
Eric C Schreiber

**Plaintiff(s):**

AMY L GOLDMAN

Represented By  
Annie Verdries  
Lovee D Sarenas

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Doah Kim  
Annie Verdries  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

1:30 PM

**1:15-11434 YKA Industries Inc a California Corporation**

**Chapter 7**

Adv#: 1:17-01039 GOLDMAN v. Krayndler et al

**#12.00** Pre-trial Conference re: Complaint for avoidance of fraudulent transfers pursuant to 11 U.S.C. sec 548 and 544, and California uniform fraudulent transfer Act 3439.04 and 3439.05; avoidance of unauthorized transfer of property of the estate pursuant to 11 U.S.C. sec 549; and recovery of property of the estate pursuant to 11 U.S.C. sec 550

fr. 6/21/17; 11/15/17; 1/24/18; 2/21/18

Notice of settlement filed 11/2/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 3/22/18.**

**Tentative Ruling:**

What is the status of the parties' settlement, as referenced in the *Notice of Settlement* filed on November 2, 2017 [doc. 13]?

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

**Debtor(s):**

YKA Industries Inc a California

Represented By  
G Bryan Brannan

**Defendant(s):**

Andrew Krayndler

Pro Se

Erika Krayndler

Pro Se

LNA Builders

Pro Se

**Plaintiff(s):**

AMY L GOLDMAN

Represented By  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... YKA Industries Inc a California Corporation**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Doah Kim  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12592 Tiffany Alexandra Fox**

**Chapter 7**

Adv#: 1:18-01001 Stokes v. Fox

**#13.00** Status conference re: complaint for objection to discharge

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Tiffany Alexandra Fox

Represented By  
Christine A Kingston

**Defendant(s):**

Tiffany A. Fox

Represented By  
Christine A Kingston

**Plaintiff(s):**

Gavin H Stokes

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01102      Zarrabi et al v. Akhlaghpour

**#14.00**      Status conference re complaint for nondischargeability of debt

from: 2/14/18

Docket      1

**Tentative Ruling:**

In their joint status report [doc. 9], the parties indicated that they are engaged in settlement discussions. In addition, the defendant has requested that the matter be sent to mediation. Why don't the plaintiffs want to participate in the Court's mediation program?

The parties should also be prepared to discuss the following:

Deadline to complete discovery: 6/29/18.

Deadline to file pretrial motions: 7/13/18.

Continued status conference: 8/8/18 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

**Plaintiff(s):**

Kamboozia Zarrabi

Represented By  
Stella A Havkin

Farideh Aklaghpour

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

1:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#14.10** Plaintiff's motion for leave to join additional party defendants pursuant to Fed. R. Bankr. Pro. 7020 [Status Conference]

fr. 2/7/18; 2/18/18; 3/14/18

Docket 205

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:30 PM**

**Tentative Ruling:**

The parties should be prepared to address the status of coordinating a mediation session with the Hon. Sheri Bluebond, United States Bankruptcy Judge.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#15.00** Defendant's motion to compel production of documents  
by plaintiff Marilyn S. Scheer

Docket 293

**Tentative Ruling:**

*Grant Defendant the State Bar of California's Notice of Motion and Motion to Compel Production of Documents by Plaintiff Marilyn S. Scheer (the "State Bar's Second Motion to Compel"), as set forth below.*

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar") alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525(a). On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**  
subject matter jurisdiction.

**Chapter 7**

On December 14, 2017, Plaintiff filed a motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192]. On February 16, 2018, the Court entered an order granting Plaintiff's Motion to Extend (the "February 2018 Scheduling Order") [doc. 273]. Among other things, the February 2018 Scheduling Order set forth procedures for resolving discovery disputes in this adversary proceeding. Thereunder, when a party wishes to move to compel discovery, the moving party is required to transmit a letter via email to the opposing party, requesting documents. The opposing party is then required to send a letter within a two week period responding to the request (but not necessarily providing the requested documents). In the event of the opposing party's failure to respond, or inadequate response, the moving party is permitted to file a motion to compel attaching the discovery letter and response [doc. 273, pp. 2-3]. The Court adopted these procedures to excuse the parties from the meet and confer requirements under LBR 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's First Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns [doc. 209]. On February 15, 2018, the Court entered a protective order limiting testimony and production of Plaintiff's medical records and tax returns (the "Plaintiff's Protective Order") [doc. 272].

On March 7, 2018 the State Bar filed a second motion to compel production of documents by Plaintiff (the "State Bar's Second Motion to Compel"). In evidence of compliance with the Plaintiff's Protective Order, the Declaration of Marc A. Shapp in support of the Motion [doc. 294] attached a discovery letter sent by email and U.S. Mail on February 16, 2018 (the "Discovery Letter") [doc. 294, Exh. A], as well as a response letter from Plaintiff sent on March 2, 2018 (the "Response Letter") [doc. 294, Exh. B]. The State Bar seeks to compel production of documents in response to the following requests:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

- 1) All documents referring to, relating to, or evidencing, any economic and non-economic harm suffered as a result of the Defendant, or any of its representatives, agents or employees' actions in this adversary proceeding" (document request number two);
- 2) All tax returns from 2009 through 2014, inclusive (encompassed within its document requests five and six);
- 3) All documents evidencing pension or retirement income, including but not limited to government-sponsored programs such as Social Security, as well as any other sources of private retirement income from January 1, 2009 through December 31, 2014 (encompassed within its document requests four and six);
- 4) All documents evidencing disability insurance income from January 1, 2012 through December 31, 2014 (encompassed within its document requests six and eleven);
- 5) All documents relating to Plaintiff's application for or the approval of disability insurance benefits Plaintiff received from January 1, 2012 through December 31, 2014 (encompassed within its document requests six and eleven).

On March 14, 2018, Plaintiff filed an opposition to the State Bar's Second Motion to Compel [doc. 308]. Therein, Plaintiff states that she will not produce her tax returns until the persons identified as "qualified persons" in the Plaintiff's Protective Order send her the non-disclosure agreements required in that order (the "NDAs"). Plaintiff asserts that she has no other documents in her possession responsive to the State Bar's requests.

## **II. DISCUSSION**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added). Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)."

Pursuant to Rule 26(b)(2)(B),

On a motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. Alternatively, the court may impose conditions on such discovery.

Pursuant to Rule 34, a party may serve on any other party a request within the scope of Rule 26(b) to "produce and permit the requesting party or its representative to inspect, copy, test, or sample" items in the "responding party's possession, custody, or control." In response, a party is obligated to produce all specified relevant and nonprivileged documents or other things that are in his or her possession, custody or control. If a party seeking a discovery is dissatisfied with the response, it may seek a court order requiring the responding party to provide an affidavit describing the efforts made to locate the documents. Request for Production of Documents and Things (FRCP 34), Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-C, *citing Buchanan v. Consol. Stores Corp.*, 206 F.R.D. 123, 125 (D. Md. 2002).

The phrase "possession, custody, or control" is disjunctive, and a party need not be in actual possession of a document to be produced. *In re Bankers Trust Co.*, 61 F3d 465, 469 (6th Cir. 1995), *also see Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995). A legal right, authority, or practical ability to obtain documents on demand constitutes "control" for purposes of FRCP 34(a)(1). *United States v. International Union of Petroleum & Industrial Workers AFL-CIO*, 870 F2d 1450, 1452 (9th Cir.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

1989), see *In re Legato Systems, Inc. Secur. Litig.*, 204 FRD 167, 169 (N.D. Cal. 2001) (party entitled to obtain a transcript of his testimony before SEC was in "control" thereof and must obtain and produce it in response to Rule 34 request).

Pursuant to Rule 37—

(a) Motion for an Order Compelling Disclosure or Discovery

(1) *In General.* On notice to other parties and affected person, a party may move for an order compelling disclosure or discovery. The motion must include certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

...

(3) *Specific Motions*

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

- iii. a party fails to answer an interrogatory submitted under Rule 33; or
- iv. a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

Federal courts generally recognize a right of privacy that can be raised in response to discovery requests. *Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992). However, unlike a privilege, the right of privacy is not an absolute bar to discovery. Courts balance the need for the information against the claimed privacy right under the following factors:

(1) the type of information requested, (2) the potential for harm in any subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized disclosure, (4) the degree of need for access, and (5) whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

*See Seaton v. Mayberg*, 610 F.3d 530, 539, 541, fn. 47 (9th Cir. 2010), citing *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004).

### III. THE STATE BAR'S DOCUMENT REQUESTS

- 1) *All documents referring to, relating to, or evidencing, any economic and non-economic harm suffered as a result of the Defendant, or any of its representatives, agents or employees' actions in this adversary proceeding" (relating to its document request number two)*

The State Bar asserts that Plaintiff has previously withheld documents responsive to this request for want of a protective order. Now, it argues, that the Court has issued the Plaintiff's Protective Order, Plaintiff no longer has a stated basis for withholding such responsive documents. The Response Letter indicates that Plaintiff plans to respond to this request by producing her tax returns. The State Bar believes that Plaintiff has possession or control of more documents responsive to the request. Because the State Bar cannot determine the completeness of Plaintiff's production until it is made, it requests that the Court issue an order requiring Plaintiff to make such production within 10 days of entry of the order.

Plaintiff has stated that she will not produce documents responsive to this request until she receives the NDAs. This is in accordance with the text of the Plaintiff's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Protective Order. Thereunder, "prior to receiving" any confidential documents, including tax returns, each person qualified to receive the confidential documents was required to "execute a nondisclosure agreement" a copy of which is required to be "immediately provided to Plaintiff" [doc. 272, p. 3]. As of the date the Opposition was filed, Plaintiff had not yet received the NDAs signed by the State Bar's attorneys in compliance with the Plaintiff's Protective Order.

Plaintiff has indicated that she is in possession of documents responsive to this request [doc. 29, Exh. D, pp. 11-12]. In response to a Rule 34 demand, a party must produce documents that are in their possession, custody or control. Once Plaintiff receives the signed NDAs she will no longer have a stated reason for withholding the documents. Consequently, the Court will grant the Motion as to this request, conditioned on Plaintiff's prior receipt of the NDAs.

- 2) *All tax returns from 2009 through 2014, inclusive (relating to its document requests five and six)*

Plaintiff's response to the discovery letter states that she will provide those tax returns that she "can locate." The State Bar argues that this is not sufficient as a matter of law. The State Bar requests that the Court enter an order requiring Plaintiff to produce tax returns for the years between 2009 and 2014 no more than 10 days from the entry of the order. To the extent that Plaintiff cannot locate tax returns for the relevant period, the State Bar requests that the Court require Plaintiff to obtain transcripts from the IRS and produce them to the State Bar within 30 days of the entry of the order.

Under Rule 34, Plaintiff must produce documents that are in her possession, custody or control. The rule does not condition the requirement to produce on the producing party's possession of the document, and the fact that a party does not have possession of the document does not absolve them of the requirement to produce it. Although Plaintiff may not be in possession of her tax returns, as the State Bar points out, the IRS provides a convenient means of obtaining tax return transcripts from prior years for free. Thus, Plaintiff is in "control" of her tax return transcripts, and must produce them. Accordingly, the Court will grant the Motion as to this request, conditioned on Plaintiff's prior receipt of the NDAs.

- 3) *All documents evidencing pension or retirement income, including but not*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

*limited to government-sponsored programs such as Social Security, as well as any other sources of private retirement income from January 1, 2009 through December 31 2014 (relating to its document requests four and six)*

a) *Relevance*

In the Response Letter, Plaintiff objects to this request as irrelevant. She argues that information about her retirement income is irrelevant because the issue is what she could have earned if her license was reinstated, and she has already established that she was indigent during the relevant period. The State Bar argues that the requested documents are relevant because they contain information about her finances during the time period for which her involuntary inactive enrollment overlapped with her bankruptcy case. This information will help determine the nature and extent of the injury Plaintiff suffered.

Plaintiff seeks relief in part in the form of payment for actual damages to compensate her for her loss of income and "loss of livelihood." In order to determine what Plaintiff's loss of income was, the parties must present information about Plaintiff's earnings during the relevant period. The Court will overrule Plaintiff's relevance objection.

b) *Invasion of Privacy*

Plaintiff asserts that this request violates her right to privacy under Article I of the California Constitution, the Plaintiff's Protective Order and federal law.

Pursuant to Federal Rule of Evidence ("FRE") 501, testimonial privileges in federal question cases are governed by federal common law. A federal question case is one that arises under federal law. 28 U.S.C. § 1331 (giving district courts original jurisdiction over all civil actions arising under federal law). The FAC alleges violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525(a). Because these are federal bankruptcy law statutory provisions, the case presents federal questions under 28 U.S.C. § 1331. Consequently, Plaintiff's reliance on the California Constitution's privacy protections is misplaced.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Plaintiff cites to the Supreme Court of the United States' decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965), in support of her argument regarding a fundamental federal right to privacy. Plaintiff is correct that federal courts have recognized a right to privacy in connection with discovery, and that "fishing" for evidence is not encouraged. However, the State Bar has articulated a specific need for the financial information it seeks, and outlined how that information is relevant to the damages calculation in this proceeding. In addition, Plaintiff does not articulate specific reasons she believes that disclosure of information regarding social security or retirement income would be harmful to her. Consequently, the Court will overrule Plaintiff's objection based on privacy.

*c) Plaintiff's Control Over Relevant Documents*

The State Bar also argues that Plaintiff has an affirmative obligation to obtain her financial records from third parties, even if she does not currently possess them. As with Plaintiff's tax returns, the State Bar requests that the Court compel Plaintiff to produce all of her financial statements for the requested period not later than 10 days after the entry of the order to compel, and, to the extent that she fails to locate the responsive documents, to obtain them from her bank or banks and produce them to the State Bar within 30 days of entry of the order.

As discussed above, Plaintiff has "control" of any documents which she can obtain upon request. To the extent that the State Bar seeks documents such as bank records regarding private retirement plans, Plaintiff can request those from her bank or banks and has the requisite "control" giving rise to a production obligation under Rule 34. In addition, as with her tax return transcripts and her bank records, Plaintiff has an obligation to obtain her records from the Social Security Administration (the "SSA"), which, as noted by the State Bar, is a service that the SSA provides for free. Consequently, Plaintiff must produce those documents related to this request that she can access, not only the ones currently in her possession. The Court will grant the Motion as to this request, conditioned on the Plaintiff first receiving the NDAs.

- 4) *All documents evidencing disability insurance income from January 1, 2012 through December 31, 2014, and all documents relating to Plaintiff's application for or the approval of disability insurance benefits Plaintiff received (relating to its document requests six and eleven).*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

In the Response Letter, Plaintiff states that she was receiving food stamps, and then in 2013 she began receiving Social Security Disability payments, and stopped receiving food stamps. She states that she no longer has her application for social security benefits or any other records responsive to these requests. Plaintiff asserts that the information responsive to this request would be included on her tax returns.

The State Bar contends that Plaintiff's response is insufficient. The State Bar requires more information regarding the basis for Plaintiff's qualification for disability insurance, not just the amount she received, in order to craft its arguments regarding her loss of livelihood damages. In addition, the State Bar plans to make arguments based on the U.S. Social Security Administration's provision of disability insurance to Plaintiff, and it will need evidence to support those arguments.

As discussed above, Plaintiff has control of the information about her disability insurance available to her through the SSA, and therefore has an obligation to produce it. Consequently, the Court will grant the Motion as to these requests as well.

**IV. CONCLUSION**

The Court will grant the State Bar's Second Motion to Compel as to document request numbers two, four, five, six, and eleven, conditioned on the Plaintiff first receiving the NDAs.

The State Bar must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#16.00** Defendants motion to compel release of plaintiff  
Marilyn S. Scheer's psychiatric records

Docket 297

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 3/19/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#17.00** Defendants motion to amend the February 15, 2018 protective order limiting testimony and production of plaintiffs medical records and tax returns

Docket 299

**Tentative Ruling:**

The Court will grant the *Motion to Amend the February 15, 2018 Protective Order Limiting Testimony and Production of Plaintiff's Medical Records and Tax Returns* (the "Motion") [doc. 299], filed by the State Bar of California (the "State Bar"), as set forth below.

**I. SERVICE**

The State Bar filed and served the Motion on March 7, 2018, only 21 days before the hearing, which is allowable under LBR 9013-1(d)(2). Marilyn S. Scheer ("Plaintiff") asserts that she was served on March 8, 2018, and therefore she objects to the untimely served motion. However, since Plaintiff had notice of the motion, and timely served a response, the one-day delay does not appear to have caused her harm.

**II. BACKGROUND**

On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns [doc. 209]. On February 15, 2018, the Court entered a protective order limiting testimony and production of Plaintiff's medical records and tax returns (the "Plaintiff's Protective Order") [doc. 272].

On March 7, 2018, the State Bar filed the Motion [doc. 299]. The Motion requested that the Court amend the Plaintiff's Protective Order to include Vanessa Holton, the State Bar General Counsel, as a "qualified person" under the Order. On March 21, 2018, the State Bar filed a statement of its procedures for settlement claims (the "Settlement Procedures") [doc. 321]. Therein, the State Bar explained that its General Counsel may authorize the settlement of claims that do not implicate a material policy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

issue up to \$25,000. In addition, the State Bar's General Counsel normally obtains settlement authority from the Board of Trustees in the event that the settlement amount in question exceeds \$25,000.

On March 14, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 307]. Plaintiff also argues that the State Bar never mentioned Vanessa Holton in discussions regarding the Plaintiff's Protective Order or at any time earlier in this proceeding.

### III. DISCUSSION

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added). Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004). Furthermore, courts have "broad authority to fashion a protective order that serves the interests of the parties and the administration of justice." *Sony Computer Entm't Am., Inc. v. NASA Elecs. Corp.*, 249 F.R.D. 378, 381 (S.D. Fla. 2008).

The Settlement Procedures indicate that as the State Bar's General Counsel, Ms. Holton has authority regarding any settlement discussions in this case. Accordingly, it appears appropriate that she have access to the pertinent discovery documents, so that she can make informed decisions regarding any settlement discussions. This Court has broad authority to fashion a protective order that serves the interests of the parties. Plaintiff has asserted that it is in her interest to settle this dispute. It therefore appears to be in Plaintiff's interest to allow Ms. Holton to be included in the Plaintiff's Protective Order as a qualified person.

**IV. CONCLUSION**

The Court will grant the Motion.

The State Bar must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#17.10** Plaintiff's motion for leave to join additional party defendants  
pursuant to Fed. R. Bankr. Pro. 7020  
[Status Conference]

fr. 2/7/18; 2/18/18; 3/14/18

Docket 205

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

2:30 PM

**1:17-12592 Tiffany Alexandra Fox**  
Adv#: 1:18-01001 Stokes v. Fox

**Chapter 7**

**#18.00** Defendant's motion to dismiss complaint in a adversary proceeding

Docket 9

**Tentative Ruling:**

Grant the *Motion to Dismiss Complaint in Adversary Proceeding Pursuant to F.R.C.P. 12(b)(6); F.R.B.P. 7012(b)(6); F.R.C.P. 9(b)* (the "Motion") as set forth below.

**I. BACKGROUND**

On September 27, 2017, Tiffany Alexandra Fox ("Defendant") filed a voluntary chapter 7 petition (the "Bankruptcy Petition"). On January 2, 2019, Gavin Stokes ("Plaintiff") filed a complaint (the "Complaint") against Defendant, seeking denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A), (B), (C) and (D) [doc. 1]. In relevant part, the Complaint alleges:

On October 24, 2015, Plaintiff and Defendant entered into a contract (the "Contract") [doc. 1, Exh. A]. Pursuant to the Contract, Plaintiff loaned Defendant \$9,050 to furnish and lease two properties. *Id.* In return, Defendant was to pay Plaintiff twenty-five percent of all rental income from those two properties and two others. *Id.* Defendant breached the Contract. Complaint, ¶ 9.

On March 17, 2017, Plaintiff filed a state court action against Defendant and Richard John Taylor ("Taylor") in the Superior Court of California, County of Los Angeles ("LASC") [doc. 1, Exh. C]. The LASC mandated that the parties attend arbitration, which they did. Complaint, ¶ 9. The parties reached a settlement agreement (the "Settlement Agreement") which was filed in the LASC on September 18, 2017 [doc. 1, Exh. B].

The Settlement Agreement required Defendant and Taylor to pay Plaintiff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT...

**Tiffany Alexandra Fox**

**Chapter 7**

\$12,748, through monthly payments of \$1,000 starting on October 25, 2017. *Id.* at ¶ 2. The Settlement Agreement also stated in relevant part, "The parties agree that if the Defendants default on the payment agreement, the Plaintiff shall petition the court to enter a judgment of \$10,000 less any payments made against the Defendants." *Id.* at ¶ 3.

Nine days after entering into the Settlement Agreement and before the first payment was due, Defendant filed the Bankruptcy Petition. On November 15, 2017, Plaintiff filed "*Plaintiff's Request for Court Order and Answer*" along with the attachments "*Declaration of Default on Payment of Judgment*" and "*Stipulation Re Settlement*" with the LASC [doc. 1, Exh. C]. On November 27, 2017, the LASC granted the Plaintiff's request and entered a judgment against Defendant and Taylor in the amount of \$10,000. *Id.*

In her Bankruptcy Petition, Defendant inflated the amount of her rental expense on her residence. *See* 1:17-bk-12592-VK, doc. 11, Schedule J. Defendant states her rental expense is \$4,750 per month; however, on the same document she states she will be moving in with her mother to share expenses. *Id.* Defendant provided a new address to the Court since she filed her Bankruptcy Petition (the "New Property"). An online database shows the New Property sold on May 22, 2017, for \$680,000. According to Zillow.com, a 30-year mortgage on the New Property with zero down payment and 4.5% interest will cost \$4,396, including insurance and taxes. Therefore, the rental expense is inflated.

In her bankruptcy Petition, Defendant made a material discrepancy. In her Schedule E/F, Defendant lists Plaintiff as a creditor with a \$12,000 claim dated October 20, 2005. *See* 1:17-bk-12592-VK, doc. 11, Schedule E/F. But the Contract was actually entered into on October 24, 2015, a ten-year discrepancy.

On February 12, 2018, Defendant filed the Motion [doc. 9]. On March 7, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 15]. On March 13, 2018, Plaintiff filed a motion for leave to file first amended complaint (the "Motion to File FAC") [doc. 16].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT... Tiffany Alexandra Fox

Chapter 7

**II. DISCUSSION**

*A. General Rule 12(b)(6) Standard*

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted)(citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). "Federal Rule of Civil Procedure 8(a) (2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (U.S. 2007)(citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT... Tiffany Alexandra Fox

Chapter 7

*B. 11 U.S.C. § 727(a)(4)(A)*

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (9th Cir. B.A.P. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A debtor acts knowingly if he or she acts deliberately and consciously." *In re Retz*, 606 F.3d at 1198 (quoting *Khalil v. Developers Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 174 (B.A.P. 9th Cir. 2007) (internal quotation omitted). The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit has described as follows:

The creditor must show 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 creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*In re Roberts*, 331 B.R. 876, 884 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007). "For the purposes of § 727(a)(4), materiality replaces the elements of reliance and proximately caused damage in a fraud cause of action." *Id.*

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *Retz* 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173). An omission or misstatement that "detrimentally affects administration of the estate" is material. *Id.*; *Wills*, 243 B.R. at 63 (citing 6 Lawrence P. King et al., *Collier on Bankruptcy* ¶ 727.04[1][b] (15th ed. rev.1998)).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

2:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 173 (circumstances might include multiple omissions or failure to clear up omissions), *aff'd*, 578 F.3d 1167. "(T)he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F3d 974, 982 (7th Cir. 2011).

Plaintiff states that Defendant in her Schedule J "overstated... her on-going rental or home-ownership expenses of \$4,750 per month." Complaint, ¶ 10. Plaintiff explains that he believes the expense is an inflated figure based on Defendant's statement in her schedules that she planned to move in with her mother, as well as his calculation of a monthly mortgage payment based on the purchase price of Defendant's mother's new home. Complaint, ¶ 10.

The amount of the rental expense listed on Defendant's Schedule J does not appear to be material. On her Schedule J Defendant states that she "will be moving, with my three sons, to Orange County to reside with my mother and share expenses there." [doc. 11, p. 35]. Because Defendant had not yet moved on the date of her bankruptcy filing, presumably she stated her rental expenses as of the petition date (as instructed by the form which states "estimate your expenses as of your bankruptcy filing date"). Plaintiff's argument that the Schedule J amount does not match his projected calculation of Defendant's mother's mortgage expense is therefore inapposite. In addition, because Defendant planned to move, the rental expense listed on her petition was not going to be her actual rental expense going forward and therefore not material to the administration of her case. In addition, as Defendant points out in the Opposition, even in the absence of her rental expense, her monthly income as of the petition date was negative. Consequently, the rental expense listed in Defendant's Schedule J is not material.

In the Motion, Defendant argues that she did not inflate the amount of her rental expense on her residence, attaching a lease agreement to the Motion [doc. 9, Exh. A], purportedly showing that she was paying \$4,750 in rent in September 2017. The question before the Court is whether the Complaint included sufficient facts, if taken as true, to support a cause of action under § 727(a)(4)(A). The Court cannot consider this evidence. Defendant further argues that if rent was removed as an expense in her Schedule J, her income would still be negative giving her no reason to falsely state the amount of her rental expense. This argument goes to the issue of intent, which the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT... **Tiffany Alexandra Fox**

**Chapter 7**

Court need not reach because the rental expense is not material.

Plaintiff additionally alleges that Defendant misstated the date the debt to Plaintiff was incurred. Complaint, ¶ 12. The Ninth Circuit Bankruptcy Appellate Panel examined this issue in *In re Bors*. No. ADV LA-12-1130-PC, 2012 WL 6575171, at \*4 (B.A.P. 9th Cir. Dec. 17, 2012), *aff'd*, 672 F. App'x 696 (9th Cir. 2016). There, the debtor among other things listed an incorrect date for when the plaintiff's claims were incurred—June 2010 instead of October 2009. The plaintiff filed an adversary complaint objecting to the debtor's discharge, alleging multiple causes of action including § 727(a)(4)(A). The debtor filed a motion to dismiss the adversary complaint and the bankruptcy court granted the motion. The Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals found in relevant part:

We conclude that Simona failed to allege sufficient facts to establish a cognizable claim that Debtor obtained his discharge by fraud. The primary "fraud" she asserted that occurred in connection with Debtor's case was his manner of listing the State Court Action in his Schedule F. Simona alleged that Debtor intentionally omitted the suffix codes from the case number for the State Court Action, that he intentionally listed an incorrect court location for it, that he improperly valued the State Court Action at \$0.00, and that he listed an incorrect date for when her fraud claim was incurred. Whether these actions can be considered a false oath is questionable. We also question whether these facts are even material. In any event, Debtor provided sufficient information about the State Court Action in his Schedule F and SOFA to put the trustee or any creditor on notice of it.

*Id.* at \*9.

Here, Plaintiff has not alleged how the misstatement detrimentally affects administration of the case. Plaintiff has not alleged that Defendant altered the amount of the debt owed to him, nor has he alleged that any party was not on proper notice of the debt. Under *Bors*, it is unlikely this fact alone can be considered a false oath or material. Defendant provides sufficient information about the debt owed to Plaintiff in her Schedule E/F to put the trustee or any creditor on notice of it. Further, Plaintiff fails to explain how stating an incorrect date is fraudulent rather than just a typographical error.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

2:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

In addition, the two alleged misstatements do not present a sufficient pattern of behavior on which to base an inference of fraudulent intent. The rental amount may well have been the amount that Defendant was paying in rent at the time of the petition, and the misstated date may not even amount to a false oath. Moreover, two misstatements hardly amount to a "pattern." Accordingly, the Court will grant the Motion as to the § 727(a)(4)(A) claim.

*C. 11 U.S.C. § 727(a)(4)(B)*

Section 727(a)(4)(B) provides that a discharge shall be denied to a debtor who "knowingly and fraudulently, in or in connection with the case ...presented or used a false claim." "The term 'claim' means the right to payment or a right to an equitable remedy for breach of performance if the breach gives rise to a right to payment. *In re Thompson*, No. ADV.LA 07-01567-EC, 2009 WL 7751298, at \*9 (B.A.P. 9th Cir. Apr. 20, 2009).

"To deny a debtor's discharge under section 727(a)(4)(B), the debtor must have presented or used inflated or fictitious claims in his bankruptcy case, with intent to defraud." *Thompson*, 2009 WL 7751298, at \*9. "Willful intent to defraud is a crucial element of the cause of action." *Id.* "Omissions, misstatements or inaccuracies in bankruptcy petitions or schedules do not necessarily establish fraudulent intent." *Id.* "A debtor's listing of a debt to another in his schedules, when false, can constitute a proper cause of action as a presentation or use of a false claim under section 727(a)(4)(B)." *Id.*

Although Plaintiff alleges that Defendant misstated the date the debt to Plaintiff was incurred, he does not allege that Defendant used inflated or fictitious claims in her bankruptcy schedules. Under the above authorities, Plaintiff has only alleged that Defendant made a misstatement or inaccuracy in her schedules. *See Thompson*, 2009 WL 7751298, at \*10. Plaintiff also cannot base a § 727(a)(4)(B) claim on the allegation that Defendant inflated her rental expense for her residence because a monthly expense is not a claim within the meaning of § 101(5). *See In re Richter*, 525 B.R. 735, 746-49 (Bankr. C.D. Cal. 2015) (discussing the definition of claim under § 101(5)). Plaintiff has not presented sufficient factual allegations on which to base a § 727(a)(4)(B) claim for relief.

*D. 11 U.S.C. § 727(a)(4)(C)*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT... Tiffany Alexandra Fox

Chapter 7

Section 727(a)(4)(C) provides that a discharge shall be denied to a debtor who "knowingly and fraudulently, in or in connection with the case ...gave, offered, received, or attempted to obtain money, property, or advantage, or promise of money, property, or advantage, for acting or forbearing to act."

To sustain an objection under § 727(a)(4)(C), the objecting party must establish: (1) knowledge and a fraudulent intent on the part of the debtor; and (2) receipt of, or an attempt to obtain, or the giving or offering of, money, property or advantage, or a promise of these, for a purpose, namely, action or forbearance in the case in which the offender is a debtor. *In re Wolf*, 577 B.R. 327, 351 (Bankr. C.D. Cal. 2017). *Stokes v. Stokes (In re Stokes)*, 451 B.R. 44, 87 (Bankr. D. Mont. 2011) (internal citations omitted).

"Section 727(a)(4)(C) clearly contemplates the denial of a discharge to debtors who accept a "bribe," i.e., money or property, advantage or a promise of these for acting or forbearing to act in or in connection with the case." *In re Stokes*, 451 B.R. at 87 (citing 6 Collier on Bankruptcy ¶ 727.06 (16th ed. 2010)). "It also includes the giving or offering of a bribe by the debtor." *Stokes*, 451 B.R. at 87 (citing 6 Collier on Bankruptcy ¶ 727.06 (16th ed. 2010)).

The Plaintiff did not assert any allegations of bribery or extortion or anything similar in the Complaint. As such, Plaintiff has not presented sufficient factual allegations on which to base a § 727(a)(4)(C) claim for relief. *See In re Wolf*, 577 B.R. at 351.

***E. 11 U.S.C. § 727(a)(4)(D)***

Section 727(a)(4)(D) provides that a discharge shall be denied to a debtor who "knowingly and fraudulently, in or in connection with the case ... withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs."

"[A] party objecting to discharge under [Section 727(a)(4)(D) ] has the initial burden of proving...: 1) the withholding of documents was done by the debtor or someone for whose conduct the debtor is legally responsible; 2) was in connection with a case; 3)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

2:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

was withheld from an officer of the estate entitled to possession; 4) was done knowingly and fraudulently; and 5) relates to the debtor's property or financial affairs." *In re Sohmer*, 434 B.R. 234, 250 (Bankr.D.Mass.2010).

Plaintiff did not assert any allegation that Defendant has withheld any books, documents, records and papers relating to Defendant's property or financial affairs from the chapter 7 trustee or an officer of the estate entitled to possession of the information. As such, Plaintiff has not presented sufficient factual allegations on which to base a § 727(a)(4)(D) claim for relief. *See In re Soliman*, No. 2:07-CV-469-GEB, 2008 WL 802484, at \*2 (E.D. Cal. Mar. 24, 2008).

***F. Leave to Amend***

Where a complaint is insufficient under FRCP 12(b)(6), a court has discretion to grant the plaintiff leave to amend. The Rule controlling amendments to complaints is Rule 15. Pursuant to Rule 15(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7015—

(1) Amending as a Matter of Course.

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) Other Amendments.

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.

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

2:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted). Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). "Futility alone can justify the denial of a motion for leave to amend." *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003).

When deciding whether to grant leave to amend or to dismiss with or without prejudice, the court should consider the "new" facts in plaintiff's opposition papers. *See Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.*, 268 F.3d 1133, 1137-38 (9th Cir. 2001).

Although Plaintiff filed the Motion to File FAC as a separate motion, this Court will interpret it as a request for leave to amend in response to the Motion. Plaintiff proposes a number of changes to the complaint, including reducing his first cause of action from claims under § 727(a)(4)(A), (B), (C) and (D) to only one claim under § 727(a)(4)(C), as well as asserting a second cause of action under § 727(a)(5).

Plaintiff does not have the right to amend the Complaint "as a matter of course," having filed the Motion to File FAC more than 21 days after the Motion was filed. Consequently, the Court must inquire as to the factors listed above. Plaintiff's proposed amendments are futile because the deficiencies in the Complaint regarding the § 727(a)(4) claims could not possibly be cured by amendment and Plaintiff's proposed § 727(a)(5) claim lacks merit.

Plaintiff's proposed amended complaint does not assert a claim under § 727 (a)(4) (A), (B) or (D), nor does it present any new facts applicable to those causes of action.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, March 28, 2018

Hearing Room 303

2:30 PM

CONT... **Tiffany Alexandra Fox**

**Chapter 7**

In addition, the proposed amended complaint does not present any new facts supporting a claim under § 727(a)(4)(C). Plaintiff appears to interpret that section as applicable to his claims that Defendant defrauded him under the Contract. As explained above, however, this section refers to bribery or fraud *in connection with the bankruptcy case*. Plaintiff does not assert any facts tending to support such a cause of action and allowing him to amend his complaint as proposed would be futile.

Section 727(a)(5) states: "The court shall grant the debtor a discharge, unless ... the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. § 727(a)(5). "Under § 727(a)(5) an objecting party bears the initial burden of proof and must demonstrate: (1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets." *Retz*, 606 F.3d at 1205.

The proposed amended complaint does not identify any of Defendant's individual assets to support Plaintiff's § 727(a)(5) claim. Instead, Plaintiff asserts that Defendant entered into a settlement agreement and then filed bankruptcy soon thereafter. The fact that Defendant entered into a settlement agreement does not necessarily indicate that she had any particular assets with which to make payments under the agreement. Consequently, the Court will not allow Plaintiff to amend his complaint to include § 727(a)(5) because such an amendment would be futile.

### III. CONCLUSION

The Court will grant the Motion without leave to amend as to claims under § 727(a)(1) - (5) and with leave to amend as to any other pertinent sections of the Bankruptcy Code, provided that Plaintiff must file any amended complaint within two weeks following the entry of the Order granting the Motion. If Plaintiff does not timely file such an amended complaint, the adversary proceeding will be dismissed, with prejudice.

Defendant must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 303**

---

2:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

**Debtor(s):**

Tiffany Alexandra Fox

Represented By  
Christine A Kingston

**Defendant(s):**

Tiffany A. Fox

Represented By  
Christine A Kingston

**Plaintiff(s):**

Gavin H Stokes

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12592 Tiffany Alexandra Fox**

**Chapter 7**

Adv#: 1:18-01001 Stokes v. Fox

**#19.00** Status conference re: complaint for objection to discharge

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Tiffany Alexandra Fox

Represented By  
Christine A Kingston

**Defendant(s):**

Tiffany A. Fox

Represented By  
Christine A Kingston

**Plaintiff(s):**

Gavin H Stokes

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

**1:17-13160 Shalva Shalom Krihali**

**Chapter 7**

Adv#: 1:18-01009 Zimmerman et al v. Krihali

**#20.00** Defendant's motion for an order striking exhibit "C," the first amended state court complaint, in its entirety, from the adversary complaint for non-dischargeability, and/or striking paragraphs 2 and 4-16 of exhibit "C" in their entirety

Docket 3

**Tentative Ruling:**

Grant in part and deny in part the *Motion to Strike Exhibit C to Plaintiff's Complaint* (the "Motion") [doc. 3].

**I. BACKGROUND**

On November 27, 2017, Shalva Shalom Krihali ("Defendant") filed a voluntary chapter 7 petition. On January 19, 2018, Bernadett Zimmerman and Gabor Szabo (together, "Plaintiffs") filed a complaint against Defendant (the "Complaint"), initiating this adversary proceeding.

The Complaint alleges that Defendant was Plaintiff Zimmerman's employer at his gold and silver buying business in Studio City, CA. Zimmerman was the plaintiff in a state court sexual harassment action against Defendant (the "State Court Action"), and Plaintiff Szabo was her attorney. The jurors in the State Court Action found Defendant responsible for willful failure to pay employee, constructive termination, sexual assault, sexual battery and intentional infliction of emotional distress. Zimmerman was awarded damages, fees and costs totaling \$127,937.09. Attached as Exhibit A to the Complaint is the judgment on the special jury verdict (the "Jury Verdict"); attached as Exhibit B is the attorney fees and costs attachment to the Jury Verdict (together with the Jury Verdict, the "Judgment"); and attached as Exhibit C ("Exhibit C") is the first amended complaint from the State Court Action (the "State Court Complaint").

On February 20, 2018, Defendant filed the Motion [doc. 3]. Therein, Defendant moves to strike Exhibit C from the Complaint in its entirety, arguing that the State



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, March 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Shalva Shalom Krihali**

**Chapter 7**

Court Complaint alleged many specific and scandalous allegations, and there is no purpose for including it in the Complaint other than to prejudice the Court against Defendant. In particular, Defendant objects to paragraphs 2 and 4-16 [doc. 1, pp. 21-25]:

- a) Paragraph 2 alleges that Defendant comingled personal and client funds, as well as personal funds with funds belonging to the business.
- b) Paragraph 4 alleges that Defendant induced Zimmerman to work for Defendant by telling her that she could work up to making a higher salary.
- c) Paragraphs 5-10 describe Defendant's various sexual advances towards and sexual boasting to Zimmerman.
- d) Paragraph 11 alleges that Zimmerman was afraid of Defendant and that she repeatedly asked him to stop touching her, but continued to work for him.
- e) Paragraph 12 describes an incident in which Defendant accused Zimmerman of stealing his money, then made sexual threats against her and sexually battered her.
- f) Paragraphs 13-15 describe Defendant's threatening and sexual phone calls and text messages to Zimmerman.
- g) Paragraph 16 describes Zimmerman's emotional response to Defendant's harassment, including sleeplessness, headaches, anxiety, and depression.

On February 28, 2018, Defendant filed an opposition to the Motion (the "Opposition") [doc. 7]. On March 15, 2018, the main bankruptcy case was converted from Chapter 7 to Chapter 13 [1:17-bk-13160-VK doc. 22].

## **II. DISCUSSION**

### *A. Federal Rule of Civil Procedure 12(f)*

Pursuant to Federal Rule of Civil Procedure ("Rule") 12(f), applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012: "The court may strike from a pleading an insufficient defense, or any redundant, immaterial, impertinent or scandalous matter." "The function of a Rule 12(f) motion strike is to avoid the expenditure of time and money that must arise from litigating spurious

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... **Shalva Shalom Krihali**

**Chapter 7**

issues by dispensing with those issues prior to trial." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). Motions to strike are "strongly disfavored, and the decision of whether to strike all or part of a pleading rests within the sound discretion of the court." *Act Now to Stop War and End Racism Coalition v. District of Columbia*, 286 F.R.D. 117, 125 (D.D.C. 2012).

Allegations are redundant if they "constitute a needless repetition or other averments or are foreign to the issue." *See Sliger v. Prospect Mortgage, LLC*, 789 F.Supp.2d 1212, 1216 (E.D. Cal. 2011). A matter is immaterial if it "has no essential or important relationship to the claim for relief or the defenses being pled." *Whittlestone*, at 974. "Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Fantasy Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds in Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534-35 (1994). The term "[s]candalous' generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court." *Anderson v. Davis Polk & Wardwell LLP*, 850 F.Supp.2d 392, 416 (S.D.N.Y. 2012); *see also Gauthier v. U.S.*, 2011 WL 3902770 at \*12 (D. Mass. 2011) (material is "scandalous" if it "improperly casts a derogatory light on someone").

The decision about whether to strike material as scandalous "is within the discretion of the district court." *Alvarado-Morales v. Digital Equipment Corp.*, 843 F.2d 613, 618 (1st Cir.1988). In exercising its discretion, the court should view "the pleadings in the light most favorable to the non-moving party." *California Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002).

A motion to strike based on extraneous matter is not appropriate unless the extraneous matter is actually prejudicial to the defense. *Davis v. Ruby Foods, Inc.*, 269 F.3d 818, 821 (7th Cir. 2001). In *Davis*, the Seventh Circuit Court of Appeals reviewed the decision of a district court to strike an entire complaint on the grounds that it included extraneous allegations, such as that the defendant was an FBI informant. The Court of Appeals found that the extraneous allegations were ignorable and non-prejudicial to the defense in the action. *Id.*

"It is not enough that the matter offends the sensibilities of the objecting party if the challenged allegations describe acts or events that are relevant to the action." § 1382

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... **Shalva Shalom Krihali**

Chapter 7

Motion to Strike—Redundant, Immaterial, Impertinent, or Scandalous Matter, 5C Fed. Prac. & Proc. Civ. § 1382 (3d ed.). However, "[a]llegations may be stricken as scandalous if the matter bears no possible relation to the controversy or may cause the objecting party prejudice." *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992). In *Talbot*, the Seventh Circuit Court of Appeals held that the district court had not abused its discretion in striking portions of the complaint for common law fraud and misrepresentation which alleged, without factual basis, that the defendant had deliberately caused a deadly salmonella outbreak. *Id.* at 655.

Unless unduly prejudicial to the defendant, allegations supplying background, which contribute to understanding of the complaint as a whole, will not be stricken. *Fuchs Sugar & Syrups, Inc. v. Amstar Corp.*, 402 F.Supp. 636, 637–638 (S.D.N.Y.1975); *see LeDuc v. Kentucky Central Life Insurance Co.*, 814 F.Supp. 820 (N.D.Cal.1992). In *Fuchs Sugar*, the antitrust complaint made reference to an earlier antitrust decree against the defendant. The defendant's motion to strike was denied because the court determined that the earlier antitrust decree could demonstrate facts bearing upon defendant's course of conduct which could "carry weight" at trial, and it was no more prejudicial to the defendant than the other allegations in the complaint. *Fuchs Sugar*, 402 F.Supp at 637-638. On the other hand, even if an allegation is relevant to plaintiff's claim, it may still be stricken if it is scandalous or set out in "needless detail." *Tucker v. Am. Int'l Grp., Inc.*, 936 F. Supp. 2d 1, 16 (D. Conn. 2013).

For example, in *Alvarado-Morales*, the First Circuit Court of Appeals upheld the decision of the district court to strike terms including "concentration camp," "brainwash" and "torture" and such similes as "Chinese communists in Korea." *Alvarado-Morales*, 843 F.2d at 618. In addition, a California district court struck language in a complaint referring to defendants as "vultures feeding on the dead." *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1023 (C.D. Cal. 1998).

*1. Relevance*

Defendant argues that Exhibit C to the Complaint is completely irrelevant to the issue of dischargeability of the Judgment, because the State Court Action has been litigated and is subject to the Judgment and Jury Verdict. It appears that the State Court Complaint is offered as background for the Judgment. Although the jury did not make specific findings as to each individual allegation of harassment, this does not detract

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... **Shalva Shalom Krihali**

**Chapter 7**

from the value of the State Court Complaint as background for the Jury Verdict.

Because the State Court Complaint is offered as background, the Court must inquire whether it is unduly prejudicial. It is true that the allegations in the State Court Complaint do not cast a favorable light on Defendant. However, these allegations are no more prejudicial than the Jury Verdict finding that Defendant actually engaged in sexual misconduct. *See Fuchs Sugar*, 402 F.Supp. at 637–638.

*2. Scandalousness*

Defendant argues that the entirety of the State Court Complaint should be struck as scandalous and prejudicial. Defendant appears to request alternatively that Paragraphs 2 and 4-16 be struck from Exhibit C. Insofar as the paragraphs in the State Court Complaint provide a greater understanding of the complaint as a whole, those paragraphs should not be struck unless they are "unduly prejudicial."

As an initial observation, the allegations in the State Court Complaint do not rise to the level of superfluous description. The State Court Complaint describes the events without any derogatory references regarding Defendant, or any language akin to the language described in *Alverado-Morales* or *Cairns*. The phrases and conduct described may be unsavory, but they do not resemble the mud-slinging that the courts struck in those cases.

Some of the paragraphs which Defendant finds objectionable are not relevant to this action. Paragraph 2 alleges that Defendant comingled personal and client funds, as well as personal funds with funds belonging to the business. Paragraph 2 is not relevant to the issue of nondischargeability, because it does not bear on the question of whether Defendant willfully or maliciously harmed Plaintiff Zimmerman. Paragraph 4 alleges that Defendant induced Zimmerman to work for Defendant by telling her that she could work up to making a higher salary. The allegations in Paragraph 4 are not relevant because the Jury Verdict found that job benefits were not conditional on Zimmerman's acceptance of Defendant's advances [doc. 1, p. 9]. Because these portions of the State Court Complaint are not relevant to this action, the Court will strike them from Exhibit C.

Paragraphs 5-16 contain information which is relevant to the Judgment. The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

CONT... **Shalva Shalom Krihali**

**Chapter 7**

allegations contained in those paragraphs lay the foundation for the Jury Verdict, which is central to Plaintiff's cause of action. As described above, it does not appear that the allegations in the State Court Complaint are any more prejudicial than the allegations in that complaint about the Jury Verdict finding that Defendant did, in fact, harass Plaintiff Zimmerman. Consequently, the Court will not strike Paragraphs 5-16 from Exhibit C.

**III. CONCLUSION**

The Court will deny the Motion as to the entirety of Exhibit C, but will grant the Motion as to Paragraphs 2 and 4 of the State Court Complaint.

Defendant must submit an order within seven (7) days.

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

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

Gabor Szabo

Represented By  
Gabor Szabo

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, March 28, 2018

Hearing Room 301

2:30 PM

1:17-13160 Shalva Shalom Krihali  
Adv#: 1:18-01009 Zimmerman et al v. Krihali

Chapter 7

#21.00 Status conference re: complaint for determination of dischargeability  
and objection to debtor's discharge pursuant to section 523(a)(6)

fr. 3/14/18

Docket 1

**Tentative Ruling:**

The parties have not filed a joint status report. Moreover, contrary to the provisions of Local Bankruptcy Rule 7016-1(a), plaintiff has not filed a declaration setting forth the attempts made by the plaintiff to contact or obtain the cooperation of the defendant. On February 28, 2018, the defendant filed a unilateral status report indicating that he believed that this matter was "ripe for adjudication by summary judgment" [doc. 6].

**Party Information**

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Pro Se

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

Gabor Szabo

Represented By  
Gabor Szabo

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:10-22873 Roberto Alejandro Cornejo and Maria Adela Cornejo Chapter 7**

**#1.00 Trustee's Final Report and Applications for Compensation**

David Gottlieb, Chapter 7 Trustee

Levene, Neale, Bender Yoo & Brill LLP, Attorneys to Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Chapter 7 Trustee

Docket 46

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$6,837.93 and reimbursement of expenses of \$42.86. The chapter 7 trustee is authorized to receive pro rata reduced amounts of \$6,154.14 in fees and \$38.57 in expenses.

Levene Neale Bender Yoo & Brill LLP (“Levene Neale”), counsel to chapter 7 trustee – approve fees of \$10,787.00 and reimbursement of expenses of \$274.15. Levene Neale is authorized to receive pro rata reduced amounts of \$9,708.30 in fees and \$246.73 in expenses.

Menchaca & Company LLP (“Menchaca”), accountant to chapter 7 trustee – approve fees of \$1,453.00 and reimbursement of expenses of \$47.00. Menchaca is authorized to receive reduced pro rata amounts of \$1,307.70 in fees and \$42.30 in expenses.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Roberto Alejandro Cornejo and Maria Adela Cornejo**

**Chapter 7**

**Debtor(s):**

Roberto Alejandro Cornejo

Represented By  
Michael H Colmenares

**Joint Debtor(s):**

Maria Adela Cornejo

Represented By  
Michael H Colmenares

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Carmela Pagay



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:14-13981 Encino Center LLC**

**Chapter 11**

**#2.00** Motion for attorney fees and costs re order sustaining objection of Encino Center, LLC to claim of Hayk Shishoyan dba Encino Tailors [Claim No. 8-1] and disallowing claim

fr. 10/19/17; 10/26/17; 11/2/17, 12/7/17; 12/21/17 (stip); 1/25/18(stip); 2/22/18

Docket 356

**\*\*\* VACATED \*\*\* REASON: Order approving settlement entered 3/23/18 [doc. 410]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Encino Center LLC

Represented By  
Sandford L. Frey  
Stuart I Koenig  
Marta C Wade  
Fredric J Greenblatt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#3.00** David Gottlieb, Chapter 7 Trustee's first Interim application for compensation and reimbursement of expenses

Docket 300

**Tentative Ruling:**

The Court will continue this matter to **April 5, 2018 at 10:30 a.m.** At the continued hearing, the chapter 7 trustee must be prepared to discuss "whether it is feasible to pay an interim dividend to creditors," pursuant to Local Bankruptcy Rule 2016-1(a)(1)(A) (ii).

**Party Information**

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#4.00** Lewis Brisbois Bisgaard & Smith LLP's First interim application by counsel for chapter 7 trustee for compensation and reimbursement of expenses for December 19, 2015 through February 26, 2018 and final application by counsel for chapter 11 trustee for compensation and reimbursement of expenses for September 1, 2015 through December 18, 2015

Docket 302

**Tentative Ruling:**

See calendar no. 3.

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

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#4.10** Application for payment of interim fees and/or expenses (11 U.S.C. Sec. 331) for Berkeley Research Group, LLC, Accountant, Period: 12/29/2015 to 1/31/2018

Docket 296

**Tentative Ruling:**

See calendar no. 3.

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

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:16-10956 Adco Container Company, Inc.**

**Chapter 7**

**#5.00 Trustee's Final Report and Applications for Compensation**

Diane Weil, Chapter 7 Trustee

Docket 74

**Tentative Ruling:**

In light of the facts of this case, the chapter 7 trustee (the "Trustee") should be prepared to address why she is entitled to compensation apart from the fee paid to chapter 7 trustees in no-asset cases and reimbursement of expenses, if funds become available.

On March 31, 2016, the debtor filed a voluntary chapter 7 petition. On January 18, 2017, Citibank, N.A. filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 35]. In the RFS Motion, Citibank alleged that the Trustee was holding at least \$136,000 in accounts receivable that was subject to Citibank's security interest. Citibank sought relief from the automatic stay to pursue its remedies to obtain the monies held by the Trustee.

At the February 8, 2017 hearing on the RFS Motion, the parties stated that they had reached a settlement as to \$100,000 of the disputed funds. The Court continued the hearing to March 8, 2017 to allow the parties to resolve their dispute as to the balance of the funds.

The hearing was continued several times. On July 12, 2017, the Court ruled that Citibank was entitled to relief from stay as to the remaining funds in the Trustee's possession [doc. 58]. On July 25, 2017, the Court entered an order granting the RFS Motion (the "RFS Order") [doc. 60].

On August 23, 2017, Citibank filed an adversary proceeding against the Trustee, seeking turnover of the funds pursuant to the RFS Order [adv. no. 1:17-ap-01078-VK]. On August 31, 2017, Citibank filed a notice of dismissal of the adversary proceeding [adv. no. 1:17-ap-01078-VK, doc. 5].

On January 8, 2018, the Trustee filed her final report and application for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Adco Container Company, Inc.**

**Chapter 7**

compensation [doc. 69]. In her application for compensation, the Trustee requests \$12,700.10 in fees and \$884.91 in expenses. The Trustee states that all funds in the estate were turned over to Citibank. The Trustee acknowledges that there are no funds in the estate for payment of fees and expenses at this time. The Trustee seeks to reserve the right to seek such compensation in the future, should funds become available.

"[S]ection 326(a) ‘does not cover cases in which the trustee simply turns over the property to the secured creditor, nor where the trustee abandons the property and the secured creditor is permitted to foreclose.’" *In re Hokulani Square, Inc.*, 776 F.3d 1083, 1086 (9th Cir. 2015) (citing H.R. Rep. No. 95–595, at 327 (1977), 1978 U.S.C.C.A.N. 5963). In light of the turnover of all funds in the estate to Citibank, it appears that the Trustee is not entitled to compensation based on this distribution.

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

**Debtor(s):**

Adco Container Company, Inc.

Represented By  
Stella A Havkin

**Trustee(s):**

Diane C Weil (TR)

Represented By  
Timothy J Yoo  
Carmela Pagay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

10:30 AM

**1:17-10107 Justino Hernandez**

**Chapter 7**

**#6.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Docket 103

**Tentative Ruling:**

David Seror, chapter 7 trustee - approve fees of \$1,125.00 and reimbursement of expenses of \$7.80.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Justino Hernandez

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Adaure C Egu  
Edith Walters

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#7.00** Disclosure statement describing the liquidating plan of ColorFX, Inc. presented by the Official Committee of Unsecured Creditors

Docket 168

**Tentative Ruling:**

The disclosure statement states that all secured claims have been satisfied; it appears that the disclosure statement does not address the secured claim of the Los Angeles County Treasurer and Tax Collector in the amount of \$342.44.

Proposed dates and deadlines regarding “Liquidating Plan of ColorFX, Inc. Presented by the Official Committee of Unsecured Creditors” (the “Plan”) [doc. 169]:

If, pursuant to 11 U.S.C. § 1125, the Court approves the “Disclosure Statement Describing the Liquidating Plan of ColorFX, Inc. Presented by the Official Committee of Unsecured Creditors” [doc. 168]:

Hearing on confirmation of the Plan: **June 7, 2018 at 1:00 p.m.**

Deadline for the Official Committee of Unsecured Creditors of ColorFX, Inc. (the “Committee”) to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the Committee: **April 20, 2018.**

The Committee must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the Committee: **May 18, 2018.**

Deadline for the Committee to file and serve the Committee’s brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **May 29, 2018.** Among other things, the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

1:00 PM

**CONT... ColorFX, Inc.**

**Chapter 11**

Committee's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the United States Trustee, and any party who objects to confirmation.

**Party Information**

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#8.00** Status conference re chapter 11 case

fr. 5/25/17; 9/7/17; 10/19/17; 12/21/17; 2/8/18;

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#9.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to 1:00 p.m. on April 12, 2018.

Appearances on March 29, 2018 are excused.

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#10.00** Motion for order 1. Authorizing the sale of substantially all of the assets of the estate, free and clear of liens pursuant to 11 U.S.C. Section 363(b) 2. Authorizing the assumption and assignment of leases and executory contracts 3. Proposed overbid procedures

**Stip to continue filed 3/23/18**

Docket 221

**\*\*\* VACATED \*\*\* REASON: Order entered 3/23/18 continuing hearing to 3/30/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#11.00** Disclosure statement hearing in support of plan of reorganization  
fr. 2/8/18

Docket 79

**Tentative Ruling:**

Debtor should be prepared to address the following:

The most recent Monthly Operating Report ("MOR"), for February 2018, reflects an ending balance of \$61.26 in Debtor's general debtor in possession account and an ending balance of \$9,686.30 in Debtor's rental account. In Part 3.A. of the proposed disclosure statement, Debtor projects having \$21,130.04 in available cash as of the effective date. However, under the feasibility analysis in part 5, Debtor projects having \$20,930.04 in cash as of the effective date. As such, there is a discrepancy of \$200 within the disclosure statement.

Both projected amounts are more than the current cash on hand, which totals \$9,747.56. In Part 5, Debtor indicates that he needs a total of \$17,177.26 to cover effective date payments. These payments include \$15,000 to AOE Law Associates and \$2,177.26 in other plan payments. In December 2017, Debtor's MOR reflected \$17,011.30 cash on hand, but in February 2018, Debtor paid AOE Law associates \$12,000 pursuant to their approved fee application [doc. 98, p. 5]. Presumably, Debtor no longer will need to pay that \$12,000 to AOE on the effective date. If this is the case, then it appears he will have enough cash on hand to cover his effective date expenses ( $\$17,177.26 - \$12,000 = \$5,177.26$ ). Debtor must update his disclosure statement accordingly.

Part 3 D of the disclosure statement states that Debtor planned to increase his tenant's rent to \$3,000 as of February 2018 (an increase of \$500), but the February 2018 MOR does not reflect any such increase. The \$6,000 would be enough to cover plan payments *if* Debtor's expenses are identical to the expenses listed in the Declaration of Current/Postpetition Income & Expenses (Exh. A to the disclosure statement) every single month (which includes plan payments). However, Debtor has not shown that he

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Ikechukwu Mgbeke**

**Chapter 11**

will actually receive his projected \$500/month increase in rental income to cover his monthly expenses.

Debtor's latest MOR reflects expenses in the amount of \$2,982.11, not including the monthly \$2,652.93 in payments to secured lender. This totals \$5,635.04, which is very close to D's projected expenses of \$5,644.23. In January 2018, D's expenses totaled \$2,981.07, which coupled with the payments to the secured lender would total \$5,634. As it stands, if Debtor strays even a penny beyond the projected expenses in the Declaration of Current/Postpetition Income & Expenses, Debtor will be unable to make plan payments.

Moreover, it appears that Debtor's disclosure statement does not taken into account his payment of postpetition income tax. Given Debtor's tight budget, it is unclear how Debtor will be able to pay his income tax liabilities.

Proposed dates and deadlines regarding "Debtor's Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "First Amended Disclosure Statement Describing Original Chapter 11 Plan:"

Hearing on confirmation of the Plan: **June 7, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **April 20, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **May 18, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Ikechukwu Mgbeke**

**Chapter 11**

declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **May 29, 2018**. Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By

Anthony Obehi Egbase

Clarissa D Cu

Crystle J Lindsey

W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#12.00** Status conference re chapter 11 case

fr. 6/22/17; 7/6/17; 7/13/17; 8/10/17; 9/21/17; 10/5/17;  
12/21/17; 2/8/18;

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, March 29, 2018

Hearing Room 301

2:00 PM

1:18-10162 JBC Staples, LLC

Chapter 11

#13.00 Application to employ Illyssa I. Fogel of Illyssa I. Fogel & Associates as Attorney for Debtor

Docket 11

**Tentative Ruling:**

Grant in part and deny in part. The Court will continue the hearing to allow the parties to file supplemental briefing regarding the issues addressed below.

**I. BACKGROUND**

On January 18, 2018, JBC Staples, LLC (the "Debtor") filed a voluntary chapter 11 petition. In the petition, the Debtor indicated that it is a single asset real estate debtor. (Doc. 1, at p. 2.) In its Statement of Financial Affairs, the Debtor indicated that on January 18, 2018, the Debtor paid \$40,000 to Illyssa Fogel. (Doc. 8, at p. 18.) The source of the \$40,000 was not disclosed in the Statement of Financial Affairs.

**A. *The Cash Collateral Motion***

On February 20, 2018, the Debtor filed an emergency motion to use cash collateral (the "Cash Collateral Motion") [doc. 20]. On March 19, 2018, the Court entered an order (i) granting the Cash Collateral Motion on an interim basis, authorizing the Debtor to use rental income as stated in the budget to maintain the real property located at 1525 Mall Road, Unit #1, Monroe, Michigan, 48612 (the "Property"), and (ii) directing the Debtor to commence paying \$8,053.33 per month in adequate protection payments to Wells Fargo, N.A. ("Wells Fargo").

A final hearing on the Cash Collateral Motion is set for May 10, 2018 at 2:00 p.m. In ruling on the Cash Collateral Motion, the Court did not rule on the validity or extent of Wells Fargo's interest in the Debtor's cash collateral, which the Debtor contests.

**B. *The Employment Application***

On February 9, 2018, the Debtor filed an application to employ Illyssa I. Fogel as general bankruptcy counsel (the "Application") [doc. 11]. Prepetition, the Debtor paid

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

to Ms. Fogel the sum of \$40,000 as a retainer, of which \$10,987 has been withdrawn to cover pre-filing fees and expenses. The remainder is being held in Ms. Fogel's trust account. (Declaration of Illyssa I. Fogel ("Fogel Decl."), ¶ 4.) The Application does not disclose the source of the funds used to pay the \$40,000 retainer.

The retention agreement between the Debtor and Ms. Fogel provides, "In consideration of my rendering these legal services, [the Debtor] shall tender to me, Illyssa I. Fogel of Illyssa I. Fogel & Associates, a total retainer of Forty Thousand Dollars (\$40,000.00). Legal services rendered on behalf of JBC will be billed and charged against the retainer . . .". (Application, Exh. C, at p. 2.) Payment of Ms. Fogel's fees from the retainer balance is subject to Court approval. (*Id.*, at p. 3.)

As for requests for compensation, Ms. Fogel proposes to use the "Professional Fee Statement" procedure as follows:

[I]n accordance with U.S. Trustee Guidelines and Notices, Applicant has been advised that the Firm will submit to the Office of the U.S. Trustee a copy of the Firm's Professional Fee Statement with respect to fees for professional services rendered to Applicant and for reimbursement of expenses incurred on behalf of Applicant/Debtor and serve copies of the Professional Fee Statement pursuant to the procedure described therein that it intends to draw down from the retainer a sum equal to 100% of the fees and costs incurred for that period. If no objection to the Professional Fee Statement is submitted and/or filed and served within ten (10) days after service of the Professional Fee Statement, the Firm will draw down from the retainer monthly. If a written objection to the Firm's monthly invoice is filed by a party-in-interest, the Firm will refrain from withdrawing the disputed funds from its trust account until the Court has resolved the objection[.]

(Application, at pp. 3-4.)

**C. The Limited Objection**

On February 22, 2018, Wells Fargo filed a limited opposition to the Application [doc. 26]. Wells Fargo does not oppose the Debtor's employment of Ms. Fogel. However,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

Wells Fargo objects to the Debtor's request to use any portion of the remaining pre-petition retainer to pay post-petition legal fees and expenses, because the retainer balance is Wells Fargo's cash collateral and should be turned over to Wells Fargo. In addition, the Debtor should not be allowed to surcharge the cash collateral pursuant to 11 U.S.C. § 506(c), because it cannot show any direct benefit to Wells Fargo from payment of the administrative expenses of the Debtor's case.

In support of its limited opposition, Wells Fargo provided the following documents as evidence of its security interest in the rents generated by the Property (the "Rents"):

- A Promissory Note (the "Note") dated November 14, 2006, executed by the Debtor in favor of Principal Life Insurance Company ("Principal LI"), in the amount of \$2.3 million. (Chance Decl., ¶ 5; Exh. 2.)
- A mortgage dated November 14, 2006, between DG Staples, LLC and the Debtor, as tenants in common, and Principal LI, together with its successors and assigns, recorded on November 20, 2006, as a first priority lien (the "Mortgage"). (Chance Decl., ¶ 6; Exh. 3.)
- UCC-1 Financing Statements filed in Delaware Department of State, as amended. (Chance Decl., ¶ 7e, Exh. 8.)
- An Allonge to Secured Promissory Note Dated November 14, 2006 from Principal LI to Principal Commercial Funding II, LLC. (Chance Decl., ¶ 8a, Exh. 9.)
- An Allonge to Secured Promissory Note Dated November 14, 2006 from Principal Commercial Funding II, LLC to Wells Fargo. (Chance Decl., ¶ 8b, Exh. 10.)
- An Assignment of Note, Mortgage, Assignment of Rents and Related Security Documents, dated November 14, 2006 from Principal LI to Principal Commercial Funding II, LLC. (Chance Decl., ¶ 8c, Exh. 11.)
- An Assignment of Mortgage recorded on February 26, 2008 in the Monroe County Register of Deeds, Document No. 2008R032456, from Principal LI to Principal Commercial Funding II, LLC. (Chance Decl., ¶ 8d, Exh. 12.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**JBC Staples, LLC**

**Chapter 11**

- An Assignment of Mortgage from Principal Commercial Funding II, LLC to Wells Fargo, recorded on August 20, 2008 in the Monroe County Register of Deeds, Document No. 2008R15911. (Chance Decl., ¶ 8e, Exh. 13.)

On January 30, 2017, Wells Fargo served a notice of default on the Debtor and DG Staples, LLC. (Chance Decl., ¶ 10, Exh. 14.) On December 19, 2017, Wells Fargo filed a complaint against the Debtor and DG Staples, LLC for appointment of receiver in Michigan state court. (Chance Decl., ¶ 4, Exh. 1.)

## **II. DISCUSSION**

Court approval is required for a debtor-in-possession to employ professional persons. 11 U.S.C. § 327(a). A court may also evaluate a prepetition retainer paid to an attorney for reasonableness. *In re Dividend Dev. Corp.*, 145 B.R. 651, 655 (Bankr. C.D. Cal. 1992).

### **A. Prepetition Retainer**

Upon the filing of a petition, a prepetition retainer may become property of the estate, depending on what type of retainer it is. A "classic" or "earned upon receipt" retainer "is one paid to a lawyer for which the only consideration exchanged is the promise to represent the client and no other party in the particular matter. The consideration cannot include logically the provision of future services if the retainer is truly earned upon receipt." *In re Hathaway Ranch P'ship*, 116 B.R. 208, 216 (Bankr. C.D. Cal. 1990). "Because the debtor holds no interest in a classic retainer, it does not become part of the estate, and no fee application is required before the attorneys use the retainer funds." *In re McDonald Bros. Const., Inc.*, 114 B.R. 989, 998–99 (Bankr. N.D. Ill. 1990).

A second type of retainer agreement between debtors and their attorneys provides that the retainer will be held by the attorneys to secure payment of fees for future services that the attorneys are expected to render. Under such a "security retainer," the money given to the debtors' attorneys is not present payment for the future services. Rather, the retainer remains the property of the debtor until the attorney "applies" it to charges for services actually rendered; any unearned

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**JBC Staples, LLC**

**Chapter 11**

funds are turned over by the attorneys.

*Id.* at 999.

A third type of retainer is an "advance payment retainer." Under such an arrangement, "the debtor pays, in advance, for some or all of the services that the attorney is expected to perform on the debtor's behalf. This type of retainer differs from the Security Retainer in that ownership to the funds is intended to pass to the attorney at the time of payment." *In re Montgomery Drilling Co.*, 121 B.R. 32, 38 (Bankr. E.D. Cal. 1990). Thus, an advance payment retainer does not become property of the estate.

Based on the language of the retention agreement and Ms. Fogel's declaration, the retainer at issue appears to be a security retainer. The retention agreement between the Debtor and Ms. Fogel provides, "In consideration of my rendering these legal services, [the Debtor] shall tender to me, Illyssa I. Fogel of Illyssa I. Fogel & Associates, a total retainer of Forty Thousand Dollars (\$40,000.00). Legal services rendered on behalf of JBC will be billed and charged against the retainer . . .". (Application, Exh. C, at p. 2.) Payment of Ms. Fogel's fees from the retainer balance is subject to Court approval. (*Id.*, at p. 3.) Prepetition, the Debtor paid to Ms. Fogel the sum of \$40,000 as a retainer, of which \$10,987 has been withdrawn to cover pre-filing fees and expenses. The remainder is being held in Ms. Fogel's trust account. (Fogel Decl., ¶ 4.)

Under similar facts, the court in *Montgomery Drilling* held that such an arrangement was a security retainer under California law. In *Montgomery Drilling*, a portion of the retainer was "allocated for the payment of filing fees, with the remainder as a retainer fee for services rendered and to be rendered." *Montgomery Drilling*, 121 B.R. at 38. Such a security retainer was held to be property of the bankruptcy estate. *See also In re GOCO Realty Fund I*, 151 B.R. 241, 251 (Bankr. N.D. Cal. 1993) ("To the extent that the client retains an interest in a retainer under California law, a pre-petition retainer paid to an attorney becomes property of the estate upon the commencement of a bankruptcy case.")

In *GOCO Realty Fund I*, a secured creditor filed a motion for turnover of prepetition retainers, on the grounds that its cash collateral was being used to fund litigation against its interests. The secured creditor argued that based on an assignment of rents

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

provision, it had perfected a security interest in funds that the debtor had paid to counsel as retainer fees. *Id.* at 244. The court held that the retainers at issue were security retainers and property of the estate. Under California law, an attorney has a security interest in a prepetition retainer.

The purpose of a security retainer is to provide security to an attorney for payment of services. The attorney perfects a security interest in money by taking possession of the funds. The Uniform Commercial Code, adopted in California, expressly permits the creation of a security interest in money, which can only be perfected by possession.

A security interest in . . . money . . . may be perfected by the secured party's taking possession of the collateral . . . . A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained . . . .

Cal. Com. Code Ann. § 9305. Counsel holding a retainer thus has a validly perfected security interest in the funds in his possession. Numerous courts have noted that a retainer is property of the estate but that the debtor's counsel also has an interest in the retainer.

*GOCO Realty Fund I*, 151 B.R. at 251–52; *see also* Cal. Com. Code § 9313 (successor statute to § 9305) Although the security retainers at issue in *GOCO Realty Fund I* were property of the estate, the retainers were not the secured creditor's cash collateral. The secured creditor had perfected its security interest but had not enforced its right to the rents prepetition. Under California law, a secured lender must take an enforcement step before it is entitled to possession of rents under an assignment of rents. *Id.* at 247, 252; *but see MDFC Loan Corp. v. Greenbrier Plaza Partners*, 21 Cal. App. 4th 1045, 1052 (1994), as modified, Feb. 2, 1994 (distinguishing *GOCO Realty Fund I* on the basis that the secured lender had made a timely demand for rents).

Here, Ms. Fogel holds the balance of the prepetition retainer in trust on behalf of the Debtor. Thus, pursuant to California Commercial Code § 9313 and *GOCO Realty Fund I*, Ms. Fogel's possession of the retainer balance perfected her security interest

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**  
in those funds.

**Chapter 11**

*GOCO Realty Fund I* was decided under California law. In the pending case, the Property is located in Michigan. Wells Fargo's position is that the loan documents as to the Property are governed by Michigan law. Although the Debtor disputes the validity of Wells Fargo's alleged interest in cash collateral, the Debtor has not addressed whether Michigan law would apply to the loan documents and to Wells Fargo's alleged interest.

Wells Fargo argues that the balance of prepetition retainer held by Ms. Fogel is Wells Fargo's cash collateral and subject to turnover. However, Wells Fargo has not established that the monies that constitute the prepetition retainer were generated from the Rents. Nor has Wells Fargo established that its alleged security interest has priority over Ms. Fogel's security interest in the prepetition retainer. Accordingly, the Court at this time cannot conclude that the balance of the prepetition retainer is Wells Fargo's cash collateral and thus subject to turnover.

***B. Professional Fee Statement Procedure***

The Court will deny the Debtor's request to compensate in accordance with the Professional Fee Statement procedure described in the Application. The Debtor has not shown sufficient justification to deviate from the compensation procedures set forth in 11 U.S.C. §§ 330 and 331. Ms. Fogel may file and serve applications for compensation not more than once every 120 days, pursuant to §§ 330 and 331.

**III. CONCLUSION**

In light of the foregoing, the Court will grant the Application to the extent that the Debtor seeks to employ Ms. Fogel. The Court will deny the Application to the extent that Ms. Fogel seeks compensation pursuant to the Professional Fee Statement process. Ms. Fogel may file and serve applications for compensation no more than once every 120 days, pursuant to 11 U.S.C. §§ 330 and 331.

The Court will continue the hearing to **May 3, 2018, at 2:00 p.m.** to allow the parties to file supplemental evidence and briefing regarding (i) the source of the retainer funds; and (ii) taking into account Michigan law (if applicable), whether the retainer balance constitutes Wells Fargo's cash collateral. **No later than April 19, 2018**, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, March 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

Debtor must file its supplemental evidence and briefing. No later than **April 26, 2018**, Wells Fargo must file any response. In the interim, the Court will not permit the use of the retainer balance to compensate Ms. Fogel for services rendered and costs incurred until the Court makes a final determination as to whether the retainer balance constitutes Wells Fargo's cash collateral and the validity of Wells Fargo's lien, if any, against the retainer balance.

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, March 30, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#1.00** Motion for order 1. Authorizing the sale of substantially all of the assets of the estate, free and clear of liens pursuant to 11 U.S.C. Section 363(b) 2. Authorizing the assumption and assignment of leases and executory contracts 3. Proposed overbid procedures

fr. 3/29/18

Docket 221

**Tentative Ruling:**

In light of the opposition filed by Massage Envy Franchising, LLC [doc. 240], the parties should be prepared to address whether they have reached any resolution of the issues raised regarding assumption and assignment of the franchise agreements, cure of monetary defaults, and the status of required leases for the clinic locations.

In addition, the debtors' sale motion proposes to pay certain secured creditors and a lessor from the sale proceeds. (Doc. 221, at p. 12.) Many of these creditors hold claims against one debtor, but not against the other debtors. The sale motion does not allocate the sale proceeds among the jointly administered entities. In effect, the sale motion appears to treat the jointly administered entities as substantively consolidated entities, when no order for substantive consolidation has been entered in these cases. [FN1]

In *In re Murray Indus., Inc.*, 119 B.R. 820 (Bankr. M.D. Fla. 1990), jointly administered debtors brought a motion for substantive consolidation for purposes of reorganization. Previously, the jointly administered debtors had sought to sell substantially all their assets.

Prior to the approval of the sale, this Court expressed its misgivings and stated its concern about the propriety of the proposed sale because it appeared to be a de facto substantive consolidation of the Debtors' estates in complete disregard of the procedural requirements for such a consolidation. This concern was based primarily on the fact that there was no allocation of the purchase price between the several entities

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 30, 2018

Hearing Room 301

1:00 PM

CONT...

**Capri Coast Capital, Inc.**

**Chapter 11**

whose assets were involved in the sale.

*Id.* at 826. The debtors stressed their dire financial condition and the need to consummate the sale. The debtors stated that they were structured as one entity and had always operated as one entity. The debtors denied that the money would go into “one pot,” never to be allocated among the debtors, and stated that substantive consolidation might be appropriate.

The court approved the sale, finding that the purchase price was an “excellent offer and represented a purchase price which far exceeded anybody's expectations.” *Id.* Two secured creditors, who held claims against each of the individual debtors, received proceeds from the sale in full satisfaction of their claims. The debtors subsequently filed the motion for substantive consolidation, which was granted by the court.

Here, unlike the debtors in *Murray*, the debtors have not stated that they are structured as one entity and have always operated as one entity. The debtors have not stated any intent to allocate sale proceeds. Most of the creditors to be paid from the sale proceeds appear to have claims against individual debtors and not against all four debtors. The *Murray* court approved the sale because the debtors were able to show that the proposed sale was not a *de facto* substantive consolidation. The debtors in the pending cases have not made a similar showing.

\*\*\*\*\*

**ENDNOTE**

[1] In their motion, the debtors have not addressed the *de facto* substantive consolidation that their proposed sale apparently contemplates. The Ninth Circuit Court of Appeals requires consideration of two factors when analyzing whether substantive consolidation is appropriate: “(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors.” *In re Bonham*, 229 F.3d 750, 766 (9th Cir. 2000) (internal quotations omitted). “Consolidation under the second factor, entanglement of the debtor's affairs, is justified only where ‘the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, March 30, 2018

Hearing Room 301

1:00 PM

CONT... **Capri Coast Capital, Inc.**

**Chapter 11**

assets for all the creditors' or where no accurate identification and allocation of assets is possible." *Id.* (quoting *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 519 (2d Cir. 1988)). "The presence of either factor is a sufficient basis to order substantive consolidation." *Id.*

In *Bonham*, the leading case on substantive consolidation in this circuit, the Court of Appeals set forth the purpose of substantive consolidation in bankruptcy:

The theory of substantive consolidation emanates from the core of bankruptcy jurisprudence. As Justice Douglas noted, "[t]he power of the bankruptcy court to subordinate claims or adjudicate equities arising out of the relationship between the several creditors is complete." *Sampsell*, 313 U.S. at 219, 61 S. Ct. 904. "[T]he theme of the Bankruptcy Act is equality of distribution." *Id.* Orders of substantive consolidation combine the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat them as though they belong to a single entity. *See Federal Deposit Insurance Corp. v. Colonial Realty Co.*, 966 F.2d 57, 58–59 (2d Cir.1992); *Eastgroup*, 935 F.2d at 248; Norton Bankruptcy Law and Practice 2d § 20:4 (1997). Substantive consolidation "enabl[es] a bankruptcy court to disregard separate corporate entities, to pierce their corporate veils in the usual metaphor, in order to reach assets for the satisfaction of debts of a related corporation." *James Talcott, Inc. v. Wharton (In re Continental Vending Machine Corp.)*, 517 F.2d 997, 1000 (2d Cir.1975). The consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans. *See In re Augie/Restivo*, 860 F.2d at 518.

*Bonham*, 229 F.3d at 764.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10527 Hector Raymundo Aguilar Farias and Claudia Florian**

**Chapter 7**

**#1.00** Motion for relief from stay [PP]  
(2017 Honda Odyssey)

HONDA LEASE TRUST  
VS  
DEBTOR

Docket 19

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Hector Raymundo Aguilar Farias

Represented By  
Stephen L Burton

**Joint Debtor(s):**

Claudia Florian Guzman

Represented By  
Stephen L Burton

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Hector Raymundo Aguilar Farias and Claudia Florian**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 303**

9:30 AM

**1:18-10527 Hector Raymundo Aguilar Farias and Claudia Florian**

**Chapter 7**

**#2.00** Motion for relief from stay [PP]  
(2017 Honda Accord)

AMERICAN HONDA FINANCE CORPORATION  
VS  
DEBTOR

Docket 20

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Hector Raymundo Aguilar Farias

Represented By  
Stephen L Burton

**Joint Debtor(s):**

Claudia Florian Guzman

Represented By  
Stephen L Burton

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 303**

9:30 AM

**CONT... Hector Raymundo Aguilar Farias and Claudia Florian**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13861 Lisa Barill**

**Chapter 13**

**#3.00** Motion for relief from stay [UD]

THE DEAN ARORA FAMILY TRUST  
VS  
DEBTOR

Docket 42

**Tentative Ruling:**

Grant relief from the automatic stay and annulment of the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor(s), on the same terms and conditions as to the debtor.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

Grant movant's request to annul the automatic stay. "Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re Nat'l Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Here, movant was unaware of the debtor's bankruptcy petition before January 17, 2018, and the debtor acted unreasonably in a way that has prejudiced movant. On November 23, 2015, the debtor filed a chapter 13 petition. In her schedules, she did not list any executory contracts or unexpired leases. The debtor also did not list



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Lisa Barill**

**Chapter 13**

movant or any other unsecured creditors in her schedules or creditor mailing list.

Regarding movant's awareness, movant submitted declarations attesting to the following facts:

On May 27, 2014, Greenback MDR LLC entered into a lease agreement (the "Lease") with the debtor and her co-lessees as to the real property located at 19610 Superior St., Northridge, CA 91324 (the "Property"). (Declaration of Nalini Arora, ¶ 4; Exh. 1.) The Lease was subsequently assigned to movant. (*Id.*, ¶ 4; Exhs. 1–4.)

On August 17, 2017, movant served a Notice to Quit on the debtor and her co-lessees (the "Notice to Quit"). The Notice to Quit states that the debtor and her co-lessees unlawfully used the Property for short-term rentals in violation of Los Angeles Municipal Code sections 11, 12.07 and 12.21. (Declaration of Robert Hudock, ¶ 2; Exh. A.)

On September 1, 2017, movant filed an unlawful detainer complaint (the "UD Complaint") in state court against the debtor and her co-lessees. (*Id.*, ¶ 3; Exh. B.) On September 11, 2017, the debtor filed a demurrer to the UD Complaint. Movant filed an opposition to the demurrer. The debtor did not appear at the demurrer hearing, and the state court overruled her demurrer. (*Id.*, ¶ 4.)

No response to the UD Complaint was filed. On September 14, 2017, the state court entered default against the debtor and her co-lessees. (*Id.*, ¶ 5; Exh. C.) Movant proceeded to serve written discovery and a notice of deposition on the debtor. The debtor did not respond. Movant then filed a motion to compel against the debtor (the "Motion to Compel"). The state court granted the Motion to Compel and imposed sanctions on the debtor in the amount of \$4,000. The debtor has not complied with the state court's order or paid the sanctions. (*Id.*, ¶¶ 6, 7; Exhs. D, E.)

On January 12, 2018, movant filed a motion for summary judgment (the "MSJ") against the debtor and her co-lessees. The debtor did not oppose the MSJ. The hearing on the MSJ was scheduled for January

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Lisa Barill**

**Chapter 13**

17, 2018. On January 16, 2018, the debtor faxed a “Notice of Stay of Proceedings” to movant, alleging a stay of the state court proceedings in light of the debtor’s bankruptcy case. (*Id.*, ¶ 8; Exh. G.) Movant attests that it had no knowledge of the debtor’s bankruptcy case before receipt of the debtor’s fax. (*Id.*, ¶ 9.)

With respect to the debtor’s conduct in the pending case, in her petition the debtor listed her residence address as “22838 Roscoe Boulevard, Canoga Park, CA 91304-3228.” The debtor did not list movant or the Lease in her schedules. The debtor has not opposed the pending motion. Although the debtor’s bankruptcy case has been pending since November 23, 2015, she did not notify movant of her case until January 17, 2018. For these reasons, the Court finds that annulment of the automatic stay is warranted.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Lisa Barill

Represented By  
Philomena N Nzegge

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**1:13-14099 Jose Flores and Maria Flores**

**Chapter 13**

**#4.00 Motion for relief from stay [RP]**

SETERUS, INC.  
VS  
DEBTOR

Docket 50

**\*\*\* VACATED \*\*\* REASON: APO entered 4/2/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Flores

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Maria Flores

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 303**

9:30 AM

**1:17-10828 Melinda Diane McCracken**

**Chapter 13**

**#5.00 Motion for relief from stay [RP]**

REVERSE MORTGAGE SOLUTIONS, INC  
VS  
DEBTOR

Docket 26

**Tentative Ruling:**

The Court will continue the hearing to **May 2, 2018 at 9:30 a.m.**

On March 31, 2017, the debtor filed her chapter 13 petition. In her schedules, the debtor listed the real property located at 26007 Alizia Canyon Drive Unit F, Calabasas, CA 91302 (the "Property"). Movant holds a reverse mortgage promissory note, secured by a deed of trust as to the Property.

On June 17, 2017, the debtor died. Her death triggered the six-month period for timely repayment of the reverse mortgage. Because the debtor could not repay, movant accelerated the maturity date of the reverse mortgage. The entire balance of the reverse mortgage is now due and payable in full.

On March 5, 2018, on behalf of the legal representative of the debtor's probate estate, the debtor's counsel filed a motion to sell the Property (the "Motion to Sell"). According to the debtor's counsel, the proposed sale will pay off the reverse mortgage in full. On March 27, 2018, the Court entered an order granting the Motion to Sell [doc. 34]. The sale is scheduled to close on April 6, 2018.

On March 6, 2018, movant filed the pending motion for relief from the automatic stay as to the Property (the "RFS Motion") [doc. 26]. Movant seeks relief from stay to foreclose against the Property. On March 21, 2018, the debtor's counsel filed an opposition to the RFS Motion, stating that the proposed sale will render the RFS Motion moot [doc. 30].

In light of the closing of the sale and the anticipated payoff in full of the debt to movant, the Court will continue this matter to **May 2, 2018, at 9:30 a.m. No later**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 303**

9:30 AM

**CONT... Melinda Diane McCracken**

**Chapter 13**

**than April 25, 2018**, the debtor's counsel must file a declaration regarding the status of the pending sale. If the sale has closed and the RFS Motion becomes moot, the Court will vacate the continued hearing.

Appearances on April 4, 2018 are excused.

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

**Debtor(s):**

Melinda Diane McCracken

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#6.00 Motion for relief from stay [AN]**

MOSHE ARDI  
VS  
DEBTOR

Docket 28

**Tentative Ruling:**

**Unless an appearance is made at the hearing on April 4, 2018, the hearing is continued to May 2, 2018 at 9:30 a.m., and movant must cure the deficiencies noted below on or before April 6, 2018.**

In accordance with Fed. R. Bankr. P. 4001(a)(1), movant must properly serve the motion and notice of the continued hearing and the deadline to file a written response on the creditors included on the list filed under Fed. R. Bankr. P. 1007(d). *See* doc. 1 [List of Creditors Who Have the 20 Largest Unsecured Claims].

Appearances on April 4, 2018 are excused.

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:16-13350 Jorge Paz**

**Chapter 7**

Adv#: 1:17-01015 State Compensation Insurance Fund v. Paz

**#7.00** Status conference re: complaint to determine dischargeability of debt under 11 U.S.C. § 523(a)(2)

fr. 4/19/17; 11/1/17; 11/15/17; 12/13/17

Docket 1

**Tentative Ruling:**

On January 24, 2018, at the pretrial conference, the parties informed the Court that they had reached a settlement. What is the status of that?

At that hearing, the Court instructed the parties that, if the case had not been dismissed, they must file a status report 14 days before this status conference. The parties have not done so.

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

**Debtor(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Defendant(s):**

Jorge Paz

Pro Se

**Plaintiff(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10030 Maria Minicucci Miller**

**Chapter 7**

Adv#: 1:17-01031 Isromorphism Holdings, LLC v. Miller

**#8.00** Status conference re complaint to determine non-dischargeability of debt

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 9/14/18.

Deadline to file pretrial motions: 10/1/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/24/18.

Pretrial: 11/7/18 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Maria Minicucci Miller

Represented By  
Alon Darvish

**Defendant(s):**

Maria Minicucci Miller

Represented By  
William J Smyth



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

**Plaintiff(s):**

Isomorphism Holdings, LLC

Represented By  
Talin V Yacoubian

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#9.00** Order to Show Cause why the Court should not dismiss this  
adversary proceeding

Docket 32

**Tentative Ruling:**

See calendar no. 10.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#10.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17, 2/14/18

Docket 1

**Tentative Ruling:**

**I. BACKGROUND**

On March 16, 2017, Hermann Muennichow ("Debtor") filed a voluntary chapter 7 petition. Prior to the petition date, Duane J. Van Dyke ("Plaintiff") had initiated a state court action against Debtor and his nondebtor spouse seeking damages for fraud, breach of fiduciary duty, imposition of constructive trust and conversion. The state court action was stayed when Debtor filed the chapter 7 petition.

On June 12, 2017, Plaintiff initiated this adversary proceeding against Debtor. The complaint seeks nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), (a)(6) and (a)(14) and objects to Debtor's receipt of a discharge pursuant to 11 U.S.C. §§ 727(c), (d) and (e) (the "Complaint") [doc. 1]. On August 22, 2017, Debtor filed an answer to the Complaint [doc. 13].

On November 16, 2017, the Court issued an order to appear and show cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC for Failure to Prosecute") [doc. 22]. On November 17, 2017, Plaintiff filed a response to the OSC for Failure to Prosecute mentioning the "recent death of the debtor" (the "Response to the OSC") [doc. 24 p. 3, lines 2-3].

On December 14, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 27]. On December 14, 2017, the Scheduling Order was served on the chapter 7 trustee, Plaintiff's counsel, Debtor's counsel and the United States Trustee through NEF [doc. 28]. On December 16, 2017, the Scheduling Order was served on Plaintiff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

and Debtor by first class mail [doc. 28]. In the Scheduling Order, the Court stated:

The Court being apprised of the death of the Debtor Hermann Muennichow and it appearing that the Plaintiff seeks to move forward with this adversary proceeding,

It is hereby ordered that the status conference is continued to February 14, 2018, at 1:30 p.m. in Courtroom 301 of the above-captioned Court; and,

It is further ordered that a status conference report be filed by January 31, 2018 to address, in addition to all other matters required in the report, *the status of any motion to substitute a party in place of the deceased debtor pursuant to Federal Rules of Procedure Rule 25(a)*.

(emphasis added).

On February 1, 2018, Plaintiff filed a joint status report (the "Status Report") [doc. 29]. In the Status Report, Plaintiff stated: "Debtor recently died and a motion to substitute personal representative will need to be filed shortly. No will or trust has been located and no [p]robate has been commenced." [doc. 29, p. 2, ¶ 5]. Plaintiff also stated that he would not know when he would be ready for trial until a personal representative was appointed and he was waiting for probate to open [doc. 29, p. 2, ¶¶ 1-2].

On February 6, 2018, Stuart R. Simone, Debtor's counsel, filed a declaration regarding the termination of the attorney client relationship (the "Simone Declaration") [doc. 30]. In the Simone Declaration, Mr. Simone states that Debtor died on November 11, 2017. Attached is a copy of the death certificate [doc. 30, p. 2, ¶ 3 and Exh. A].

On February 15, 2018, the Court entered an order to show cause why the Court should not dismiss the adversary proceeding because of Debtor's death (the "OSC"). The OSC required Plaintiff to appear and explain how the Court could grant effective relief in this adversary proceeding [doc. 32]. The OSC set a response deadline of March 21, 2018.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

1:30 PM

CONT... **Hermann Muennichow**

**Chapter 7**

On March 21, 2018, Plaintiff filed a response and declaration in reply to the Court's OSC (the "2018 Response") [doc. 35]. In the 2018 Response, Plaintiff requests that the Court abstain from hearing the adversary proceeding under 11 U.S.C. § 1334(c) (1). However, Plaintiff also asserts that a determination of Plaintiff's claims in this proceeding remains relevant because of a dispute regarding certain life insurance proceeds. Allegedly Plaintiff and Debtor's spouse, Helayne Muennichow ("Mrs. Muennichow"), each claim an interest in these policy proceeds. (EN1)

As of the date the Response was filed, probate had not opened, nor had there been an appointment of any personal representative by any court [doc. 35, p. 2, ¶ 6].

**II. DISCUSSION**

***A. Federal Rule of Civil Procedure ("Rule") 25***

"In an adversary proceeding, specific procedural steps are required if the deceased, including a chapter 7 debtor, is a party." *In re Eads*, 135 B.R. 380, 384 (Bankr. E.D. Cal. 1991). The mechanics are set out in Rule 25, which applies in adversary proceedings pursuant to Fed. R. Bankr. P. 7025.

Pursuant to Rule 25(a)—

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

...

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

In *Barlow v. Ground*, the Ninth Circuit Court of Appeals held that Rule 25 required

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

1:30 PM

CONT... **Hermann Muennichow**

Chapter 7

two affirmative steps to trigger the running of the ninety-day period. 39 F.3d 231, 233 (9th Cir.1994). "First, a party must formally suggest the death of the party upon the record." *Id.* "Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute." *Id.* "A non-party successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons." *Id.*

As a preliminary matter, there are four documents in the record in which Debtor's death is acknowledged: (1) the Response to the OSC [doc. 24]; (2) the Status Report [doc. 29]; (3) the Simone Declaration [doc. 30]; and (4) the Scheduling Order [doc. 27]. Of these documents, only the Scheduling Order is sufficiently formal to trigger the running of the 90-day period. *See In re Brand*, 545 B.R. 37, 40 (Bankr. C.D. Cal. 2016) ("the notice of death must be sufficiently *formal* in order to trigger the running of the 90-day period") (emphasis in original); *Acri v. Int'l Ass'n of Machinists and Aerospace Workers*, 595 F.Supp. 326, 330 (N.D. Cal 1984) (the notice must be more than a mere mention of the death in a court proceeding or pleading).

In *Barlow*, the Court of Appeals held that where a nonparty representative is clearly known at the time notice of death is made, Rule 25 requires service upon that nonparty representative pursuant to [Rule 4. 39 F.3d at 233](#). In the 2018 Response, Plaintiff states that Mrs. Muennichow, who is not a party to this proceeding, asserts an interest in Debtor's life insurance policy proceeds. Consequently, Mrs. Muennichow likely has an interest in contesting this nondischargeability action.

As a result, in order to trigger the beginning of the statutory period, it appears appropriate that any notice of death be served on Mrs. Muennichow. *See Rende v. Kay*, 415 F.2d 983, 986 (D.C. Cir. 1969) (statement of death must "identify the representative or successor of an estate who may be substituted as a party for the deceased before Rule 25(a)(1) may be invoked"). Because the Scheduling Order was not served on Mrs. Muennichow, it appears that it is not sufficient to trigger the running of the 90-day period in Rule 25.

***B. Abstention***

Pursuant to 11 U.S.C. § 305(a), a bankruptcy court, after notice and a hearing, may dismiss a case "or may suspend all proceedings in a case under this title, at any time

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

if... the interests of creditors and the debtor would be better served by such dismissal or suspension." Title 28, U.S.C. § 1334(c)(1) states that "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

The Ninth Circuit Court of Appeals has articulated twelve factors for consideration when assessing the merits of abstention:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of nondebtor parties.

*In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990). "No single factor is dispositive, and the decision does not turn on a counting of the number of factors on each side." *In re Lazar*, 200 B.R. 358, 373 (Bankr. C.D. Cal. 1996).

The overwhelming weight of the *Tucson* factors is against abstention. The Complaint asserts causes of action under 11 U.S.C. §§ 523 and 727. This Court has exclusive jurisdiction over core bankruptcy matters, which include nondischargeability actions. Plaintiff has not asserted any state law causes of action and has no right to a jury trial. Moreover, Plaintiff maintains that there is a dispute with regard to entitlement to Debtor's life insurance policy proceeds and that a finding of nondischargeability remains relevant. Because this Court has exclusive jurisdiction to determine the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

claims asserted in the Complaint, abstention is not appropriate.

**III. CONCLUSION**

In light of the foregoing, Plaintiff should be prepared to inform the Court if and how he intends to continue prosecuting the Complaint.

**ENDNOTES**

1. On July 28, 2017, David Seror, the chapter 7 trustee appointed in Debtor's case, filed an adversary complaint against Debtor and Mrs. Muennichow seeking, among other things, to avoid fraudulent transfers under 11 U.S.C. § 548 and denial of discharge under 11 U.S.C. § 727 [1:17-ap-01069-VK]. In her answer, Mrs. Muennichow stated that she and Debtor have been legally separated at all times relevant to that adversary proceeding [doc. 7, ¶ 10]. In connection with that proceeding, the chapter 7 trustee has noted: "Debtor and Defendant Helayne were in the process of obtaining a divorce at the time of the Debtor's death. . . . Counsel for Debtor's wife has stated in Court that she will not and cannot serve as the personal representative for Debtor's decedent's estate herein" [doc. 35, Declaration of David Seror, ¶ 3].

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**

**Hermann Muennichow**

Richard Burstein

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#11.00** Pretrial conference re: complaint to determine dischargeability  
of debt pursuant to sections 523(a)(15)

fr. 8/23/17; 10/25/17

Docket 1

**Tentative Ruling:**

The Court will continue the pretrial conference to **May 16, 2018 at 2:30 p.m.** to be held in conjunction with the hearing regarding defendant Aime Greenberg's *Motion for Summary Judgment*.

Appearances on April 4, 2018 are excused.

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#12.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 2/26/18 continuing hearing to 5/2/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12387 Exclusive German Auto Repair, Inc.**

**Chapter 7**

Adv#: 1:17-01103 Cheung v. Exclusive German Auto Repair, Inc.

- #13.00** Status conference re: complaint to determine dischargeability of debt pursuant to  
1) 11 U.S.C. section 523(a)(2)(A);  
2) 11 U.S.C. section 523 (a)(6)

Docket 1

**Tentative Ruling:**

On September 16, 2017, Exclusive German Auto Repair, Inc. ("Debtor") filed the underlying chapter 7 bankruptcy petition [1:17-bk-12387]. On October 11, 2017, the chapter 7 trustee filed a report of no distribution. On December 6, 2017, Kingsang Cheung ("Plaintiff") filed this adversary proceeding, asserting claims for nondischargeability of debt under 11 U.S.C. § 523(a)(2)(A) and (a)(6) against Debtor and "Does 1-50, Inclusive."

As an initial matter, only "individuals" may receive a discharge under chapter 7. 11 U.S.C. § 727(a)(1). Debtor, as a corporation, is not eligible for discharge of its debts in its chapter 7 case. Consequently, this adversary proceeding is moot; Debtor's debt to Plaintiff is not subject to being discharged, irrespective of this adversary proceeding.

To the extent that Plaintiff seeks relief from any person other than Debtor, Plaintiff may pursue that relief in a nonbankruptcy court.

Based on the foregoing, the Court will dismiss this adversary proceeding as moot. The Court will prepare the order.

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

**Debtor(s):**

Exclusive German Auto Repair, Inc.

Represented By  
Maria W Tam

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Exclusive German Auto Repair, Inc.**

**Chapter 7**

**Defendant(s):**

Exclusive German Auto Repair, Inc. Pro Se

**Plaintiff(s):**

Kingsang Cheung  
Represented By  
Bradford T Child

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

Adv#: 1:18-01014 Adri v. Adri

**#14.00** Order to show cause re: remand and status conference  
re removed proceeding

Docket 1

**Tentative Ruling:**

The Court will remand this proceeding to state court.

**I. BACKGROUND**

**A. *The Debtor and Creditor's Business Dealings***

In 1977, Deborah Adri (the "Debtor") and Moshe Adri ("Creditor") married. In 1983, Creditor and the Debtor formed Shoes for Sale, Inc., which funded the purchase of other ventures. In 1990, the Debtor and Creditor divorced, but they continued to work together on various business ventures. Between 1992 and 1994, the Debtor and Creditor purchased retail units in Van Nuys out of which they operated their shoe business. However, due to a decline in business, they rented out the individual units to third-party lessees. The Debtor and Creditor formed the following LLCs, each of which held title to an individual unit.

- M & D Resources, LLC — 6401-6407 Van Nuys Blvd & 14501 Victory Blvd;
- Street Resources, LLC — 6420-6422 Van Nuys Blvd;
- 6371-77 VNB, LLC — 6371-6377 Van Nuys Blvd., 14504-14508 Victory Blvd ("6371-77 VNB");
- Magen Star Resources, LLC — 6311-6313 Van Nuys Blvd., Van Nuys, CA 91401;
- Reseda Chase Plaza, LLC — 8450-8458 Reseda Bl. Northridge, CA 91324

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri  
and**

**Chapter 11**

- Noho Plaza, LLC (collectively, "the LLCs").

(Doc. 10, ¶¶ 2, 3.)

In 2004, the Debtor and Creditor entered into an agreement regarding the ownership of the LLCs (the "LLC Agreement"). The LLC Agreement contains an arbitration provision stating, "Any action to enforce or interpret this Agreement or to resolve disputes between the MEMBERS or by or against any MEMBER shall be settled by arbitration in accordance with the rules of the American Arbitration Association." (LLC Agreement, § 10.1.)

Until 2008, the units were rented at capacity. However, by 2009, the occupancy rate had fallen to 40%. On March 11, 2011, the Debtor filed an unlawful detainer action against Creditor on behalf of 6371-77 VNB for Creditor's non-payment of rent. Creditor filed a lawsuit against the Debtor and the LLCs which was later dismissed due to lack of standing. (Doc. 10, ¶¶ 5, 6.)

***B. Creditor's Prior Bankruptcy Cases, the Settlement Agreement, and the Sale Order***

On December 12, 2012, Creditor filed a chapter 7 petition, initiating case no. 1:12-bk-20733-MB ("Creditor's Bankruptcy"). On March 18, 2013, the Debtor filed a chapter 11 petition on behalf of 6371-77 VNB, initiating case no. 1:13-bk-11840-AA (the "6371-77 VNB Bankruptcy").

On March 27, 2014, all parties executed a global settlement agreement (the "Settlement Agreement"). The Settlement Agreement provides, "The Parties stipulate that this Release Agreement may be enforced by the Court pursuant to California Code of Civil Procedure § 664.6." (Doc. 10, Exh. B, Settlement Agreement, ¶ 4.) The Settlement Agreement also provides that, "This settlement is subject to court approval." (*Id.*, ¶ 14.) The Settlement Agreement further provides as follows:

Following execution of this Agreement, [the Debtor] shall pay, indemnify and hold harmless [Creditor] for all past, present and future expenses related to the real estate operations of 6371-77 VNB, LLC

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

[and other entities] including but not limited to: mortgage expenses, credit line expense, attorney's fees, accounting fees, property taxes, maintenance expenses, brokerage expenses, payroll and insurance premiums, as well as for any and all third party claims, past and present, brought against 6371-77 VNB, LLC [and other entities].

(*Id.*, at ¶ 3.) There is no provision for arbitration in the Settlement Agreement.

The Debtor filed a motion for approval of the Settlement Agreement in the 6371-77 VNB Bankruptcy. On May 8, 2014, the bankruptcy court in the 6371-77 VNB Bankruptcy entered an order approving the Settlement Agreement (the "6371-77 VNB Settlement Agreement Order"). (Debtor Decl., ¶ 11; case no 1:13-bk-11840-AA, doc. 292.) The 6371-77 VNB Settlement Agreement Order did not contain an exclusive reservation of jurisdiction in the bankruptcy court to hear disputes regarding the Settlement Agreement.

On May 6, 2014, Creditor filed a motion in Creditor's Bankruptcy to approve the Settlement Agreement [case no. 1:12-bk-20733-MB, doc. 171]. After creditor East West Bank filed an opposition, Creditor voluntarily withdrew his motion to approve the Settlement Agreement [case no. 1:12-bk-20733-MB, docs. 174, 177]. East West Bank held a judgment against Creditor for alleged shortfalls in the repayment of the debt owed by 6371-77 VNB. (Doc. 20, ¶ 18.)

Subsequently, Creditor settled with the chapter 7 trustee (the "Trustee Settlement"), sold his residence (the "Property"), and dismissed Creditor's Bankruptcy. (Debtor Decl., ¶ 11.) The order approving the Trustee Settlement stated that the Debtor had filed an opposition to the Trustee Settlement, but she orally withdrew the opposition at the hearing. (Case no. 1:12-bk-20733-MB, doc. 388.)

The orders approving the Trustee Settlement (the "Trustee Settlement Order") and sale of the Property (the "Sale Order") specifically reserved jurisdiction over all matters regarding or related to the Trustee Settlement and sale of the Property. (Debtor Decl., ¶ 12; case no. 1:12-bk-20733-MB, docs. 387, 388)

***C. Petition to Compel Arbitration***

On October 26, 2016, Creditor filed a petition to compel arbitration against the Debtor



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

in state court (the "Petition to Compel"). On January 24, 2017, the Debtor filed a response to the Petition to Compel, in which she stated she was agreeable to proceeding with arbitration and that she intended to file a cross-complaint against Creditor. (Doc. 20-1, Exh. A, at pp. 1–2.)

The arbitrator allowed Creditor to amend the Petition to Compel. In the amended Petition to Compel (the "Amended Petition"), Creditor set forth the following causes of action:

- (1) Breach of contract
- (2) Fraud and deceit/concealment
- (3) Negligent misrepresentation
- (4) Breach of fiduciary duty
- (5) Common count — money had and received
- (6) Conversion

(Doc. 14, ¶ 6; Doc. 2-12, pp. 3–6.) In her response to the Amended Petition, the Debtor did not object to the arbitrator's jurisdiction to determine the claims. Instead, the Debtor filed an answer and counterclaim, seeking \$300,000 from Creditor for alleged improper distributions in violation of the LLC Agreement. (Doc. 14, ¶ 6; Doc. 2-15, at pp. 14–22.)

The American Arbitration Association Rules (the "AAA Rules") provide, in relevant part:

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

...

- (c) A party must object to the jurisdiction of the arbitrator or to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gave rise to the objection. The arbitrator may rule on such objection as a preliminary matter or as a part of the final award.

(Doc. 14, ¶ 7.)

The matter was ordered to arbitration. Multiple hearings were held and extensive discovery was conducted. Five days before trial, the Debtor filed her trial brief, in which she contested the jurisdiction of the arbitrator to hear the parties' dispute. (Doc. 20, ¶ 17.) A two-day trial was held before the arbitrator. (Doc. 14, ¶¶ 9–10.) At the arbitration trial, Creditor argued that pursuant to the Settlement Agreement, the Debtor had agreed to indemnify Creditor for all debts arising from 6371-77 VNB. According to Creditor, because the Debtor did not do so, Creditor was forced to agree to the Trustee Settlement and sell the Property in Creditor's Bankruptcy, which resulted in Creditor's loss of the equity in the Property. (Doc. 20, at ¶ 18.)

On November 29, 2017, a corrected award was issued (the "Corrected Award"). (Doc. 14, ¶ 10.) The Corrected Award awarded Creditor \$1,215,761 in economic damages, \$114,917.85 in attorney's fees, and \$23,156.63, and provided for other declaratory and injunctive relief. \$500,000 of the economic damages were damages resulting from the loss of equity from the forced sale of the Property in Creditor's Bankruptcy. (Doc. 11-6, Exh. 3-2, at pp. 34, 38.)

On December 22, 2017, Creditor filed a petition to confirm the Corrected Award (the "Petition to Confirm"). The Debtor filed an opposition to the Petition to Confirm, claiming that the arbitrator lacked jurisdiction to rule on the parties' dispute. (Doc. 14, ¶ 12.) The hearing on the Petition to Confirm was set for February 21, 2018. Before the hearing on the Petition to Confirm, the state court issued a tentative ruling granting the Petition to Confirm.

On February 16, 2018—five days before the hearing on the Petition to Confirm—the Debtor filed a voluntary chapter 11 petition. On February 20, 2018, the Debtor removed the state court proceeding (the "State Court Action") to this Court. At the February 21, 2018 hearing on the Petition to Confirm, the state court continued the matter to April 25, 2018. (Doc. 14, ¶¶ 13, 14.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

On February 20, 2018, the Court issued the Order to Show Cause re Remand (the "OSC" [doc. 5]). The OSC provided that any party seeking remand must file and serve its memorandum of points and authorities not later than 28 days after the filing of the notice of removal. This period expired on March 20, 2018.

On March 22, 2018, Creditor filed his response to the OSC and request for remand [doc. 13].

**II. DISCUSSION**

**A. Subject Matter Jurisdiction**

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441–1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

The Court strictly construes the removal statutes against removal jurisdiction, and jurisdiction must be rejected if there is any doubt as to the right of removal. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992). The party seeking removal bears the burden of establishing federal jurisdiction. *Id.*

Moreover, under the well-pleaded complaint rule, "[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987).

Parties cannot consent to subject matter jurisdiction. *Clapp v. Commissioner*, 875

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

F.2d 1396, 1398 (9th Cir. 1989) ("Subject matter jurisdiction cannot be conferred upon the court by consent or waiver."); *and In re Marshall*, 264 B.R. 609, 619 (C.D. Cal. 2001) ("[I]n so far as the issue is the actual subject matter jurisdiction of the federal courts, rather than just the bankruptcy court's power to enter a final judgment, such jurisdiction cannot be conferred by consent.").

As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

**1. *Arising Under Jurisdiction***

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

**2. *Arising In Jurisdiction***

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . .". *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

arising in a case under title 11 . . . ." 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475–76, 131 S. Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

**3. Related to Jurisdiction**

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the 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 (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pegasus Gold Corp.*, 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they . . . 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case . . . . Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at \*10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have "arising under" or "arising in" jurisdiction. There is no "arising under" jurisdiction because the matter does not involve any statutory provisions of the Bankruptcy Code. This matter also does not "arise in" the bankruptcy case because it can independently exist outside of bankruptcy and be brought in another forum. None of the causes of action alleged in the Amended Petition are dependent or intertwined with the existence of Debtor's bankruptcy or any issue therein.

However, this Court does have "related to" jurisdiction over this matter. The Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

is a respondent in the State Court Action. If Creditor is successful in the State Court Action, Creditor will obtain a substantial judgment against the Debtor, and the size of the Debtor's estate may be diminished as a result. Consequently, the State Court Action has the potential to affect the administration of the Debtor's estate.

***B. Mandatory Abstention***

Creditor argues that mandatory and permissive abstention are applicable to removed actions. However, in 2001, the Ninth Circuit Court of Appeals held that neither mandatory nor permissive abstention applies to removed proceedings because there is no pending state proceeding upon removal. *In re Lazar*, 237 F.3d 967, 981–82 (9th Cir. 2001) (citing *Sec. Farms v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 124 F.3d 999, 1009–10 (9th Cir. 1997)). This Court is bound by the Court of Appeals' holding. As a result, neither mandatory nor permissive abstention applies to this proceeding.

***C. Timeliness of Creditor's OSC Response***

On February 20, 2018, the Court issued the Order to Show Cause re Remand (the "OSC" [doc. 5]). The OSC provided that any party seeking remand must file and serve its memorandum of points and authorities not later than 28 days after the filing of the notice of removal. This period expired on March 20, 2018.

On March 22, 2018, Creditor filed his response to the OSC. The Debtor objected that Creditor's response was untimely in violation of the OSC. The Debtor also objected that Creditor did not comply with 28 U.S.C. § 1447 by filing a motion to remand within 30 days of the notice of removal. However, 30 days after the notice of removal is March 22, 2018. It appears that the response to the OSC is timely pursuant to 28 U.S.C. § 1447.

***D. Remand***

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

actions ‘related to’ bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court.’” *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604, at \*4 (N.D. Cal. Oct. 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court’s docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

*Id.* at 508 n.2; see also *In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007).

In weighing the factors above, the Court finds that remand is appropriate. First, although the outcome of the State Court Action may affect the size of the Debtor’s estate, litigation of the State Court Action will not otherwise have an effect on the bankruptcy case. The liability arising from the State Court Action will determine the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

amount of distribution available to creditors, but that determination will not hinder the Debtor and other parties in interest from proceeding with the Debtor's bankruptcy case.

Moreover, the Amended Petition alleges exclusively California causes of action, including breach of contract, fraud and deceit/concealment, negligent misrepresentation, breach of fiduciary duty, common count—money had and received, and conversion. Although the issues may not be particularly difficult or complex, unlike California courts, this Court does not routinely adjudicate these issues.

Next, the only basis for bankruptcy jurisdiction over this proceeding is 28 U.S.C. § 1334, and the Amended Petition does not present "core" issues. As a result, this Court is unable to enter final judgment without the parties' consent. Although the Debtor noted the notice of removal that she consents to the entry of final judgment by this Court, that consent is contingent on the Court *not* remanding this action to state court. Creditor has not stated whether he consents to entry of final judgment by this Court.

The Debtor points to the Trustee Settlement Order and the Sale Order as reserving bankruptcy court jurisdiction to hear disputes arising from those orders. However, a review of the record shows that the dispute in the State Court Action arises primarily from the Settlement Agreement and whether it superseded the LLC Agreement. The 6371-77 VNB Settlement Agreement Order—the only prior bankruptcy court order approving the Settlement Agreement—did not reserve exclusive bankruptcy court jurisdiction. By its terms, the Settlement Agreement required "court" approval, but it did not specify which court, or that more than one bankruptcy court was required to approve it. Similarly, the Settlement Agreement provides that it "may be enforced by the Court pursuant to California Code of Civil Procedure § 664.6," but it does not specify which court.

California Code of Civil Procedure ("C.C.P.") § 664.6 provides:

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, *the court may retain jurisdiction* over the parties to enforce the settlement until performance in full of the terms of the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**      **Deborah Lois Adri**  
settlement.

**Chapter 11**

(Emphasis added.)

Contrary to the Debtor's position, the language of C.C.P. § 664.6 regarding retention of jurisdiction is permissive, not mandatory. In *Weddington Prods., Inc. v. Flick*, 60 Cal. App. 4th 793, 809 (1998), the California Court of Appeal stated, "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." The Court of Appeal in *Weddington* did not comment on whether jurisdiction under C.C.P. § 664.6 was solely vested in the settlement court. The Debtor cites *Elyaoudayan v. Hoffman*, 104 Cal. App. 4th 1421 (2003) for the proposition that "it is for the settlement court to determine in the first instance whether the parties have entered into an enforceable settlement." However, *Elyaoudayan* does not support this proposition. *Terry v. Conlan*, 131 Cal. App. 4th 1445 (2005) is also inapposite. Although *Terry* addresses a trial court's review of motions to enter judgments based on a settlement agreement, the case did not specifically invoke C.C.P. § 664.6. In addition, the Court of Appeal in *Terry* stated that "[w]hen the same judge hears the settlement and the motion to enter judgment on the settlement, he or she may consult his memory." *Id.* at 1454. This statement presupposes the possibility that different judges may hear the settlement and the motion to enter judgment on the settlement. Nothing in *Terry* supports the proposition that the same judge *must* hear both the settlement agreement and the motion to enter judgment on the settlement, pursuant to C.C.P. § 664.6.

The Debtor argues that the State Court Action concerns the sale of the Property. However, the State Court Action does not appear to be a dispute arising from the Sale Order, but rather from the Settlement Agreement. The Corrected Award issued by the arbitrator does not attempt to undo the terms of Sale Order. Instead, the Corrected Award provides for monetary damages arising from the Debtor's breaches of agreements.

Further, as noted above, the State Court Action has a limited relationship to the Debtor's bankruptcy case. While the judgment and extent of damages may have an effect on future distribution to creditors, the State Court Action does not otherwise deal with any bankruptcy issues or impede the Debtor's administration of the estate. As there are no core bankruptcy matters at issue in this proceeding, severability of any

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 11

bankruptcy issues from state law causes of action is also not an option.

Given the extensive prior litigation that took place outside of this Court, this Court's docket will be burdened by the removal. The arbitrator has fully adjudicated the State Court Action, and all that remains is entry of judgment by the state court. Additionally, the state court has significant experience with the California causes of action alleged in the Amended Petition.

Finally, the parties will not face any prejudice if the Court remands the State Court Action. At the time Creditor filed the Petition to Compel, he chose the state court as the appropriate forum. The Debtor also chose the state court as the appropriate forum to file her answer and cross-complaint. Remanding this proceeding will allow the state court to finish adjudicating the issues that were before it, and the state court will not need additional time to familiarize itself with those issues and the parties.

The record also suggests that the Debtor removed this action for the purpose of forum shopping. Contrary to the AAA Rules, the Debtor did not timely contest the jurisdiction of the arbitrator. The first time she contested jurisdiction was days before the arbitration trial. The Debtor subsequently contested jurisdiction in opposing the Petition to Confirm. As noted above, there does not appear to be a basis for contesting the arbitrator's or the state court's jurisdiction in the State Court Action. See *Greenspan v. Ladit, LLC*, 185 Cal. App. 4th 1413, 1446-47 (2010) (construing a JAMS rule similar to AAA rule regarding jurisdiction; "In other words, the arbitrator decides arbitrability issues at the outset, and his decision is final.").

Many of the *Enron* factors weigh in favor of remanding this proceeding to state court. Consequently, the Court will remand this proceeding.

### III. CONCLUSION

In light of the foregoing, the Court will remand this proceeding to state court.

Creditor must submit an order within seven (7) days.

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

**Debtor(s):**

Deborah Lois Adri

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

Robert M Yaspan

**Defendant(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**Plaintiff(s):**

Moshe Adri

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#15.00** Motion for default judgment under LBR 7055-1

Docket 14

**Tentative Ruling:**

**I. BACKGROUND**

On April 25, 2017, Grigor Chilingaryan ("Defendant") filed a voluntary chapter 7 petition. On July 31, 2017, Merchants Acquisition Group, LLC ("Plaintiff") filed a motion for extension of time to file a complaint objecting to the Defendant's discharge (the "Motion to Extend") [Bankruptcy Docket, doc. 20]. On September 6, 2017, the Court entered an order granting the Motion to Extend, extending the deadline for Plaintiff to file a complaint to November 13, 2017 [Bankruptcy Docket, doc. 28].

On November 13, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to it pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B). In relevant part, the Complaint stated:

Defendant opened a charge account (the "Account") with Daniel's Jewelers ("Jewelers") on March 2, 2017. In order to open the Account, Jewelers required Defendant to fill out and execute a combined credit application and account agreement. In the credit application portion, Defendant misrepresented that his monthly net income was \$8,200.00. Defendant made this misrepresentation with the intention that Jewelers would rely on the fraudulent representation in its decision whether to grant the extension of credit and the amount of the credit extension. Jewelers actually, reasonably and justifiably relied on the misrepresentation of net monthly income.

On March 2, 2017, Defendant purchased four watches from Jewelers for the combined price of \$3,675.75. Defendant made a \$600 down payment and charged the remaining balance of \$3,075.75 to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Grigor Chilingaryan**

**Chapter 7**

Account. Defendant impliedly represented his present intention to perform the repayment obligation incurred by the purchase. Jewelers actually, reasonably and justifiably relied on Defendant's representation of intention to perform the repayment obligation. Defendant actually lacked the intention to perform his repayment obligation. Defendant failed to make any payments after March 2, 2017.

Defendant obtained luxury goods by actual fraud, false pretenses and false representations with the specific intent to deprive Jewelers of its property. Defendant made a materially false statement regarding his monthly net income in writing with the specific and actual intent to deceive Jeweler.

The unpaid principal balance of the debt owed to Jewelers is \$3,827.72, subject to proof of the exact amount at trial. Jewelers assigned the account and claims to Plaintiff. The debt owed to Plaintiff should be nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B).

On January 2, 2018, Plaintiff served a summons (the "First Summons") on Defendant [doc. 3]. On January 2, 2018, Plaintiff requested that default be entered against Defendant [doc. 5]. On January 3, 2018, the Court did not enter default against Defendant because the summons had expired and had not included the declaration required under Local Bankruptcy Rule 7055-1(a) [doc. 6].

On January 7, 2018, Plaintiff filed a request that the clerk issue another summons (the "Second Summons") [doc. 7]. On January 12, 2018, Plaintiff served the second summons on Defendant [doc. 11]. On March 6, 2018, Plaintiff requested that default be entered against Defendant [doc. 12]. On March 7, 2018, the Court entered default against Defendant [doc. 16].

On March 6, 2018, Plaintiff filed the Motion [doc. 14]. Defendant has not timely filed a response to the Motion.

**II. DISCUSSION**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Grigor Chilingaryan**

**Chapter 7**

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments.

FRCP 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

...(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"The bankruptcy court has broad discretion to grant a default judgment; the plaintiff is not entitled to such judgment as a matter of right." *In re McGee*, 359 B.R. 764, 771 (B.A.P. 9th Cir. 2006).

"The factors to be considered for entry of a default judgment include: (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 sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Grigor Chilingaryan**

**Chapter 7**

Civil Procedure favoring decisions on the merits." *McGee*, at 771.

**A. Possibility of Prejudice to Plaintiff**

Although Plaintiff served the Second Summons on Defendant, Defendant failed to respond to the pleadings. If Defendant receives a discharge, and default judgment is not entered in Plaintiff's favor, Plaintiff will not be able to recover. As such, a motion for default judgment appears to be Plaintiff's only avenue for relief. This factor favors entry of default judgment.

**B. Merits of the Plaintiff's Substantive Claims**

*1. 11 U.S.C. § 523(a)(2)(A)*

In accordance with § 523(a)(2)(A), a debt for property may be excepted from discharge when a debtor obtained the property by "false pretenses, a false representation or actual fraud, other than a statement respecting a debtor's or an insider's financial condition." To prevail on a § 523(a)(2)(A) claim, a plaintiff must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Plaintiff points to two misrepresentations by Defendant: (A) Defendant using the Account to purchase the watches was an implied representation that Defendant intended to repay the debt when he did not; and (B) Defendant representing that his

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Grigor Chilingaryan**

**Chapter 7**

monthly net income was \$8,200.00 when it was not.

As to the first misrepresentation, pursuant to the presumption in § 523(a)(2)(C), the Complaint and the declaration attached to the Motion sufficiently establish nondischargeability of the debt under § 523(a)(2)(A). Pursuant to § 523(a)(2)(C)—

- (i) For purposes of subparagraph (A)—
  - (I) consumer debts owed to a single creditor and aggregating more than \$675 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable."
  - ...
  - (ii) for purposes of this subparagraph--
    - (I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and
    - (II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.

The Complaint and the declaration attached to the Motion establish that Defendant purchased the watches for more than \$675. Because they are not goods or services reasonably necessary for the support or maintenance of Defendant or a dependent of Defendant, the watches are luxury goods. *See In re LaBovick*, 355 B.R. 508, 515 (Bankr. W.D. Pa. 2006). Defendant purchased the watches on March 2, 2017, and Defendant filed his chapter 7 petition on April 25, 2017. Thus, Defendant purchased the watches within the requisite ninety day period. Defendant has not responded to rebut the presumption. Consequently, Plaintiff has established nondischargeability of the debt under 11 U.S.C. § 523(a)(2)(A).

*2. 11 U.S.C. § 523(a)(2)(B)*

Pursuant to 11 U.S.C. § 523(a)(2)(B), the plaintiff must prove, by a preponderance of the evidence, that the debtor incurred a debt by "use of a statement in writing:"



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

2:30 PM

CONT...

**Grigor Chilingaryan**

**Chapter 7**

- (i) that is materially false;
- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive....

Here, the Complaint refers to one statement in writing: Defendant's monthly net income on the credit application. The Motion argues that Jewelers reasonably relied on Defendant's representation in making the loan. The Declaration attached to the motion was made by an officer of Plaintiff, who cannot properly testify as to reliance by the Jewelers. Consequently, Plaintiff has not established nondischargeability under § 523(a)(2)(B).

**C. Sufficiency of the Complaint**

"The second and third [*Eitel*] factors, taken together, require that [plaintiffs] assert a claim upon which [they] may recover." *In re Sharma*, 2013 WL 1987351, at \*10 (B.A.P. 9th Cir. May 14, 2013), *aff'd*, 607 F. App'x 713 (9th Cir. 2015), *citing IO Group*, 708 F.Supp.2d 989, 997 (N.D. Cal. 2010). "For default judgment based solely on the complaint, without the benefit of a prove-up hearing, the facts in the complaint must go beyond being well-pled; they must support the ultimate determination of liability." *Sharma*, 2013 WL 1987351 at \*10.

For the reasons stated above, the Complaint sufficiently states a claim against Defendant as to 11 U.S.C. § 523(a)(2)(A), but not as to § 523(a)(2)(B)

**D. The Sum of Money at Stake in the 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. Security Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002).

In the Complaint, Plaintiff requests that the Court deem nondischargeable the amount of \$3,827.72, subject to proof of the exact amount at trial. In the declaration attached to the Motion, the Plaintiff states that \$4,181.69 was due on the Account as of the date

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

2:30 PM

CONT... **Grigor Chilingaryan**

Chapter 7

the Motion was filed [doc. 15, Declaration of Bruce Jackman, ¶ 6].

**E. Possibility of Dispute**

"The fifth *Eitel* factor considers the possibility of dispute as to any material facts in the case." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*4 (C.D. Cal. Feb. 13, 2004). "The general rule of law is that 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, 917-918 (9th Cir. 1987) (quoting *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir.1977)).

As discussed above, a *presumption* of discharge arises for credit extended for the purchase of luxury goods over \$675 within 90 days of the petition pursuant to § 523(a)(2)(C). Defendant purchased the watches on credit from Jewelers on March 2, 2017. Jewelers extended \$3,075.75 of credit to Defendant for the purchase of the watches. Defendant filed his chapter 7 petition on April 25, 2017, well within the 90-day period. There appears to be a low possibility of dispute as to the presumption of nondischargeability.

**F. Possibility of Excusable Neglect**

"Due process requires that all interested parties be given notice reasonably calculated to apprise them of the pendency of the action and be afforded an opportunity to present their objections before a final judgment is rendered." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*5 (C.D. Cal. Feb. 13, 2004) (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950)).

Plaintiff served the Second Summons and the Complaint on Defendant at Defendant's address listed on his bankruptcy petition. Plaintiff also served the Motion on Defendant using that address. As such, the possibility of excusable neglect is low.

**III. CONCLUSION**

The Court will grant the Motion as to Plaintiff's claim for relief under § 523(a)(2)(A). Plaintiff will be awarded a judgment in the amount of \$4,181.69.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Grigor Chilingaryan**

**Chapter 7**

Pursuant to the provisions of Local Bankruptcy Rule 7055-1(b)(4), the Court may award attorney's fees when a promissory note, contract, or applicable statute provides a basis for the recovery of attorney's fees. Although the Complaint states that the underlying contract provides for attorney's fees, the copies of the contract provided with the Motion are illegible. If Plaintiff wishes to recover attorney's fees, Plaintiff must file an authenticating declaration and copy of the contract which clearly reflects an applicable contractual provision for Plaintiff's recovery of attorney's fees.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

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

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By  
Richard W Snyder

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#16.00** Defendant's motion for judgment on the pleadings

Docket 16

**Tentative Ruling:**

The Court will continue this hearing to 2:30 p.m. on April 18, 2018.

Appearances on April 4, 2018 are excused.

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

CIT BANK, N.A. (f/k/a One West

Represented By  
KRISTIN WEBB

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

- #17.00** Status conference re complaint :
- (1) violation of 11 U.S.C.code 524(a)(2)-debtor discharge injunction.
  - (2) violation of FRBP, Rule 3001(c)(s)(c); failure to file proof of claim re security interest statement of amount to cure default as of petition filing date.
  - (3) vilocation of FRBP, rule 3001(c)(3)(C), failure to file attachment to appropriate official form re security interest in debtor's principal residence.
  - (4) fraudulent concealment
  - (5) violation of U.S.C. code 157;fraud and deceit
  - (6) declaratory relief

fr. 1/24/18; 3/14/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **April 18, 2018 at 2:30 p.m.** to be held in conjunction with the hearing regarding the *Motion for Judgment on the Pleadings* filed by defendants MERS Mortgage Electronic Registration Systems, Inc. and Ocwen Loan Servicing, Inc. [doc. 16].

Appearances are excused on April 4, 2018.

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Pro Se

Ocwen Loan Servicing, Inc

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg Chapter 7**

Alliance Bancorp, Inc Pro Se

Alliance Bancorp Estate Trustee Pro Se

MERS Mortgage Electronic Pro Se

One West Bank Pro Se

DOES 1 through 25, inclusive Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg Pro Se

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#18.00** Defendant, Earnest Charles Barreca's motion to exclude plaintiffs' evidence

fr. 3/7/18; 3/14/18; 3/21/18; 3/23/18

Docket 155

**Tentative Ruling:**

**I. BACKGROUND**

On February 13, 2015, Ernest Charles Barreca ("Defendant") filed a voluntary chapter 7 petition. On May 15, 2015 Gerson and Gertrude Fox ("Plaintiffs") filed a complaint against Defendant, requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(4) and (6) [doc. 1]. On July 27, 2015, Plaintiffs filed a first amended complaint, which added claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B) (the "FAC") [doc. 12].

On May 5, 2017, Defendant timely filed a motion for summary judgment (the "MSJ") [doc. 86]. On May 31, 2017, the parties filed an initial pretrial stipulation (the "IPS") [doc. 99]. On June 21, 2017, Plaintiffs filed an opposition to the MSJ [doc. 107]. On June 28, 2017, Defendant filed a reply to the opposition to the MSJ [doc. 117]. Defendant did not object to the use of any exhibits in the opposition to the MSJ pursuant to FRCP 26(a)(1) and 37(c). On July 12, 2017, the Court denied the MSJ [doc. 121].

On February 5, 2018, the parties filed a joint pretrial stipulation (the "JPS") [doc. 145]. The parties attached their respective exhibit and witness lists to the JPS. On February 8, 2018, Defendant filed the motion to exclude evidence (the "Motion"), outlining objections to each of Plaintiffs' JPS exhibits largely on the grounds of relevance, lack of foundation, and failure to provide FRCP 26 disclosures [doc. 155].

On March 23, 2018, at the prior hearing on the Motion, the Court issued a tentative ruling (the "Prior Tentative Ruling") stating, in relevant part:



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

Plaintiffs have demonstrated that they sufficiently identified Exhibits 2, 5, 29, 31, 32, 43, 53-55, 61, 65, 69, 83 through the ISP or the opposition to the MSJ. Plaintiffs assert that they also sufficiently identified Exhibits 1, 3-4, 6-28, 30, 33-42, 44-52, 58-60, 62-64, 66-68, 70, 73-81 and 84-87 (the "Additional Exhibits"). (EN2)

The Court will continue this hearing to April 4, 2018 at 2:30 p.m. No later than March 30, 2018, Plaintiffs must submit a supplemental declaration evidencing that, in or before June 2017, they identified or provided the Additional Exhibits to Defendant in connection with this proceeding. No later than April 3, 2018, Defendant must file any response to the supplemental declaration...

In addition, Plaintiffs must pay Defendant's attorney's fees incurred in preparing the Motion. No later than March 30, 2018, Defendant must submit evidence of the attorney's fees which he incurred to do so.

[doc. 174, pp. 27-28].

On March 27, 2018, Defendant filed a declaration by his attorney, Jeff Katofsky, in support of attorney's fees (the "Katofsky Fee Declaration") [doc. 171], stating that his customary legal rate is \$775.00 per hour, and requesting total billable fees of \$17,842.50. The Katofsky Fee Declaration attached an invoice detailing the requested fees. Defendant also filed a declaration by associate counsel Michael Leff in support of the fee request, stating that his customary legal rate is \$475.00 per hour [doc. 172].

On March 30, 2018, Plaintiffs filed a declaration by their attorney, Brian Nachimson (the "Nachimson Declaration") [doc. 173]. Therein, Mr. Nachimson presented the following explanations regarding Plaintiff's provision or identification of the Additional Exhibits:

Exhibit Numbers	Provision/Identification
1, 7-17, 19-20, 24-26, 33-40, 47-52	These documents were contained within an exhibit identified in the IPS.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

67, 80	These documents were identified by name in the IPS.
18, 44-45	These documents were included as exhibits to the Declaration of Benjamin Nachimson in support of opposition to MSJ [doc. 110] which was served on June 21, 2017.
30	This document was contained within an exhibit in the request for judicial notice in support of opposition to the MSJ [doc. 108] which was served on June 21, 2017.
28, 42	Plaintiffs presented these documents to the Defendant at his deposition on April 25, 2017.
3, 4, 22-23, 27, 41, 84, 86-87	Plaintiffs did not identify or provide these documents to Defendant, but these documents are contained within a document Nachimson refers to as the "Stern Database," which Defendant intends to use as evidence.
21	Plaintiffs did not previously disclose this exhibit due to a typographical error. Plaintiffs wrote an incorrect date on the exhibit in the IPS, but their intent was to include it in the IPS.
6, 46, 58-60, 62-64, 66, 70, 73-79, 81, 85	Plaintiffs did not identify or provide these documents to Defendant.

On April 3, 2018, Defendant filed a declaration by his attorney, Jeff Katofsky, in response to the Nachimson Declaration (the "Katofsky Declaration") [doc. 175]. Therein, Mr. Katofsky argues that the exhibits included in the IPS should be excluded at trial because they were identified post-discovery and the failure to identify them during discovery was not substantially justified or harmless. Mr. Katofsky also argues that while the Prior Tentative Ruling noted that Exhibits 1, 2, 58, 59 and 70 could be authenticated by Mr. Fox, Mr. Fox cannot testify and these exhibits should be excluded on those grounds.

## II. DISCUSSION

### *A. Exhibits Sufficiently Identified or Provided*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

The Prior Tentative Ruling stated that the Court would allow exhibits that Plaintiffs could establish they identified or provided to Defendant in or before June 2017. Plaintiffs have submitted declaratory evidence that they identified Exhibits 1, 7-17, 19-20, 24-26, 30, 33-40, 44-45, 47-52, 67 and 80 in the IPS on May 31, 2017. In addition, Plaintiffs have submitted evidence that they provided Exhibits 18, 30 and 44-55 in the opposition to the MSJ and the request for judicial notice in support of the opposition to the MSJ, each of which were filed on June 21, 2017. Plaintiffs have also submitted satisfactory evidence that they provided Exhibits 28 and 42 to Defendant at his deposition in April 2017. Plaintiffs will be allowed to use the foregoing exhibits at trial.

Mr. Katofsky argues that the exhibits identified in the IPS should be inadmissible because they were not supported by arguments that the failure to produce them was substantially justified in the Nachimson declaration. However, the Prior Tentative Ruling directed Plaintiff to submit a declaration evidencing that they identified or provided the Additional Exhibits to Defendant in connection with this proceeding in or before June 2017, and did not invite further arguments regarding justification. The Court has already ruled that Plaintiffs' failure to provide documents prior to the close of discovery was not substantially justified or harmless, and elected to impose lesser sanctions [doc. 174, p. 27].

*B. Exhibits Not Sufficiently Identified or Provided*

Plaintiffs state that they did not identify or provide Exhibits 6, 46, 58-60, 62-64, 66, 70, 73-79, 81 and 85. Although Plaintiffs intended to identify Exhibit 21 in the IPS, they did not do so. Because Plaintiffs did not identify or provide these documents to Defendants, the Court will not allow Plaintiffs to use them at trial.

Plaintiffs also state that although they did not provide Exhibits 3, 4, 22-23, 27, 41, 84 and 86-87 (the "Stern Exhibits"), these exhibits are contained in a database compiled by an independent forensic accountant, Adrian Stern, in the bankruptcy case of Michael Joel Kamen (the "Stern Database") [Nachimson Declaration, ¶¶ 3-5, 7]. The Stern Database includes over 100,000 pages [Katofsky Declaration, ¶ 3]. Defendant has offered the "Notice by the Official Committee including the Report of Adrian Stern" as one of his exhibits [doc. 135, p. 87, lines 13-14], which appears to contain only 112 pages, and not the entire Stern Database [Nachimson Declaration, Exh. 1].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 4, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

As the Court explained in the Prior Tentative Ruling, Defendant's knowledge of the existence of documents does not relieve Plaintiffs of their FRCP 26 obligations [doc. 174, p. 24]. The fact that the Stern Exhibits were contained in an extensive database of documents supporting the Report of Adrian Stern is not adequate to make Defendant sufficiently aware of Plaintiff's intended use of such documents in this adversary proceeding. The Court will not allow Plaintiffs to use the Stern Exhibits at trial.

*C. Exhibits Which Could be Authenticated by Mr. Fox*

The Katofsky Declaration argues that Exhibits 1, 2, 58, 59 and 70 should be excluded because Mr. Fox will not be able to authenticate them at trial. Plaintiffs assert that Exhibits 1, 2, 58 and 59 can be authenticated by Mr. Fox, but not Exhibit 70 [doc. 174, p. 12]. In addition, this argument ignores the statement in the Prior Tentative Ruling that excluding those exhibits for lack of foundation is premature at this time because there may be other witnesses who can authenticate them. The Court will not alter its prior ruling with regard to Defendant's foundation objections.

*D. Attorney's Fees*

Defendants bear the burden of proving that the fees sought are reasonable. *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). The Ninth Circuit Court of Appeals customarily assesses the reasonableness of attorney's fees utilizing the "lodestar" approach where the number of hours reasonably expended is multiplied by a reasonable hourly rate. *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006). "A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "

Defendant's attorneys request a total of \$17,842.50 in fees. The invoice attached to the Katofsky Fee Declaration includes 22.3 hours to prepare the Motion (3.5 hours by Mr. Katofsky, and 18.8 hours by Mr. Leff). At Mr. Leff's rate of \$450 per hour, 18.8 hours to draft the Motion yields \$8,460 in fees.

The Motion does not bear these fees. A vast majority of the Motion constitutes a series of "cut and paste" objections to Plaintiffs' exhibits. None of the objections

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

appear to have been extensively researched or briefed, and some appear to have been applied indiscriminately. For example Defendant objected to almost every single exhibit on the grounds of relevance, lack of foundation and failure to provide Rule 26 disclosure, with almost identical language in each objection. Mr. Katofsky's time in reviewing the Motion appears reasonable, but the 18.8 hours purportedly spent by Mr. Leff in drafting the Motion appears to exceed the reasonable amount of time required for a motion that presents largely repetitive arguments. Consequently, the Court assesses that a more appropriate time expense for such a motion is 14 hours, for a total of \$6,300 in fees.

According to the invoice, Mr. Katofsky expended a total of 11.5 hours on the Motion (including attending hearings and drafting an opposition to Plaintiffs' supplemental brief) at a rate of \$775 per hour, for total fees of \$8,912.50. This hourly rate is unreasonably high. While Mr. Katofsky may be compensated for fees incurred, the lodestar approach allows only reasonable fees and expenses. Reducing Mr. Katofsky's rate to a more common rate of \$500 yields a total of \$5,750.

**III. CONCLUSION**

Based on the foregoing, the Court will allow Plaintiffs to present Exhibits 1, 7-17, 19-20, 24-26, 30, 33-40, 44-45, 47-52, 67 and 80 at trial, in addition to the exhibits the Court allowed in the Prior Tentative Ruling. The Court will not allow Plaintiffs to present Exhibits 3, 4, 6, 21-23, 27, 41, 46, 58-60, 62-64, 66, 70, 73-79, 81 and 84-87.

The Court will allow attorney's fees in this matter of \$5,750 for Mr. Katofsky and \$6,300 for Mr. Leff, for a total award of \$12,050, to be paid within 21 days after entry of the order.

The Court will prepare the order.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#19.00** Pretrial conference re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18

Docket 12

**Tentative Ruling:**

As the Court noted in its tentative ruling on February 14, 2018, contrary to Local Bankruptcy Rule ("LBR") 7016-1(b)(2)(D), the defendant's list of exhibits in the proposed joint pretrial order [doc. 145] are inadequately labeled. At the hearing, the defendant stated that the vast majority of his exhibits are emails, but the exhibits are not properly labeled as such and do not describe any of the content or parties to the emails. Are the plaintiffs satisfied with the way the defendant's exhibits are identified?

In addition, on February 14, 2018, the Court noted that the parties had not included the information required by LBR 7016-1(b)(2)(F), (G), (H) and (I). Although the Court is now satisfied regarding LBR 7016-1(b)(2)(F), (G) and (H), the parties have not yet addressed the length of the trial, as required by LBR 7016-1(b)(2)(I).

The Court has bifurcated this proceeding and the first phase of trial will only concern nondischargeability and not damages. **The parties should address the impact of the bifurcation on their witness and exhibit lists.**

Mr. Katofsky stated in a declaration that at the prior status conference, Mr. Nachimson agreed to advise him by March 20, 2018 as to which of the five disputed witnesses (Kevin Golshan, Jack Garrett, David Frank, Mohammed Islam and Peter Meherian) plaintiffs intend to call at trial, but Mr. Nachimson has not yet provided that information [doc. 175, p. 4]. Has Mr. Nachimson done so yet?

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

On January 5, 2018, the Court set trial in this case for the week of May 29, 2018 [doc. 143, p. 2]. The Court has currently reserved four days for the trial. The parties must finalize their witness schedule and, based on that schedule, apprise the Court of the new projected length of the trial.

For the pretrial conference on July 12, 2017, the Court set forth a pretrial briefing and witness testimony schedule. The Court intends to adhere to that schedule, as follows:

**TRIAL BRIEFS:**

The plaintiffs' trial brief must be filed and served **28 days** before trial (*i.e.*, **May 1, 2018**).

The defendant's trial brief must be filed and served **21 days** before trial.

Any reply brief by the plaintiffs must be filed and served **14 days** before trial.

**WITNESS TESTIMONY:**

The Court will take all direct testimony by declaration, with the exception of hostile witnesses **To the extent that any hostile witness is being questioned by an adverse party**, the Court will take direct testimony from these witnesses live at trial. To the extent that a witness is not testifying at the request of an adverse party, the direct testimony of that witness must be set forth in a timely filed and served declaration.

Witnesses may be cross-examined live at trial.

The declarations of the plaintiffs' witnesses, in lieu of direct testimony, must be filed and served **28 days** before trial (*i.e.*, **May 1, 2018**).

The declarations of the defendant's witnesses, in lieu of direct testimony, and any evidentiary objections to the declarations filed by the plaintiffs must be filed and served **21 days** before trial.

Any evidentiary objections to the declarations filed by the defendant must be filed and served **14 days** before trial.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 4, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Any responses to the evidentiary objections must be filed and served **7 days** before trial.

**Seven (7) days** before trial, the parties also must file a joint witness schedule setting forth the time and date (e.g., which day and a.m. or p.m.) for the cross-examination of each witness.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#0.10** David Gottlieb, Chapter 7 Trustee's first Interim application for compensation and reimbursement of expenses

from: 3/29/18

Docket 300

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$56,317.76 and reimbursement of expenses of \$44.45, on an interim basis. The approved fees are based on § 326(a) statutory fees, calculated using interim disbursements in the amount of \$962,739.99 and disbursements to professionals in the amount of \$139,518.69.

Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois"), for services rendered as general counsel to David K. Gottlieb as chapter 11 trustee – approve fees of \$30,585.00 and reimbursement of expenses of \$629.13, on an **interim** basis. The Court has not awarded \$66.00 in fees for the reasons stated below.

Lewis Brisbois, for services rendered as general counsel to David K. Gottlieb as chapter 7 trustee – approve fees of \$87,948.50 and reimbursement of expenses of \$1,012.61, on an interim basis. The Court has not awarded \$907.00 in fees for the reasons stated below.

Berkeley Research Group, LLC ("BRG"), accountant to chapter 7 trustee – approve fees of \$17,231.28 and reimbursement of expenses of \$109.95, on an interim basis. The Court has not awarded \$889.50 in fees for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Elmer Alexander Uceda**

**Chapter 7**

case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel ("BAP") upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 05, 2018

Hearing Room 301

10:30 AM

CONT... Elmer Alexander Uceda

Chapter 7

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 11 trustee, as a trustee.

***Lewis Brisbois***

Category	Date	Timekeeper	Description	Hours	Fee
Asset Disposition	9/24/2015	DK	Drafted notice of application to employ counsel for chapter 11 trustee	0.3	\$66.00

In addition, the Court does not approve the fees billed for the services identified below, which could and should be performed by the chapter 7 trustee, as a trustee.

***Lewis Brisbois***

Category	Date	Timekeeper	Description	Hours	Fee
Asset Disposition	9/24/15	DK	Drafted notice of application to employ counsel for chapter 11 trustee	0.3	\$66.00
Asset Disposition	6/16/16	DK	Revise Application to Employ Dennis Block as unlawful detainer counsel and Declaration in support thereof	0.5	\$110.00
Asset Disposition	7/28/16	DK	Prepare Declaration of Non-Opposition re: employment of UD special litigation counsel	0.3	\$66.00
Asset Disposition	7/28/16	DK	Draft proposed order granting employment of special litigation counsel	0.4	\$88.00
Case Administration	6/15/16	DK	Draft Application to Employ Special Litigation Counsel for unlawful detainer proceeding of Debtor's company	1.6	\$352.00
Case Administration	6/29/16	AG	Review and revise proposed application to appoint UD Counsel	0.3	\$135.00
Case Administration	6/30/16	AG	Review and revise disclosures on UD counsel application	0.2	\$90.00

***BRG***

Date	Name	Description	Hours	Fee
1/5/16	Thomas Jeremiassen	Review and preparation of Chapter 7 employment application for BRG.	0.5	\$262.50

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Elmer Alexander Uceda**

**Chapter 7**

1/6/16	Thomas Jeremiassen	Preparation of chapter 7 employment application and notice and emails with trustee and staff	0.7	\$367.50
1/7/16	Thomas Jeremiassen	Finalized employment application and notice and emailed Renee Johnson	0.3	\$157.50

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below:

***BRG***

<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Hours</b>	<b>Fee</b>
1/3/17	Victoria Calder	Updated postal receipts for proof of filing	0.8	\$68.00
1/19/17	Victoria Calder	Updated postal receipts for proof of filing	0.1	\$8.50
1/30/17	Victoria Calder	Updated postal receipts for proof of filing	0.2	\$17.00
2/6/17	Victoria Calder	Updated postal receipts for proof of filing	0.1	\$8.50

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the chapter 7 trustee will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Elmer Alexander Uceda**

**Chapter 7**

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#0.20** Lewis Brisbois Bisgaard & Smith LLP's First interim application by counsel for chapter 7 trustee for compensation and reimbursement of expenses for December 19, 2015 through February 26, 2018 and final application by counsel for chapter 11 trustee for compensation and reimbursement of expenses for September 1, 2015 through December 18, 2015

from: 3/29/18

Docket 302

**Tentative Ruling:**

See calendar .10.

**Party Information**

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

10:30 AM

**1:14-14686 Elmer Alexander Uceda**

**Chapter 7**

**#0.30** Application for payment of interim fees and/or expenses (11 U.S.C. Sec. 331) for Berkeley Research Group, LLC, Accountant, Period: 12/29/2015 to 1/31/2018

from: 3/29/18

Docket 296

**Tentative Ruling:**

See calendar .10.

**Party Information**

**Debtor(s):**

Elmer Alexander Uceda

Represented By  
Anthony A Friedman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Doah Kim  
Amy L Goldman  
Lovee D Sarenas



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#1.00** Status conference re: Leslie Richards' motion for reconsideration to vacate order for sanctions/disgorgement

Docket 30

**Tentative Ruling:**

The movant and the United States Trustee should be prepared to discuss a date and time for an evidentiary hearing on the *Motion for Reconsideration to Vacate Order for Sanctions/Disgorgement*, filed on February 20, 2018 [doc. 30].

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#1.10** Motion for reconsideration to vacate order disgorging compensation

Docket 66

**Tentative Ruling:**

The motion was not served on the debtor. Accordingly, the Court will continue this hearing to allow for proper service on the debtor.

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**1:16-10045 Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**#2.00** Motion to resolve dispute under settlement agreement between David Gottlieb, Chapter 7 Trustee and Debtors Duane Daniel Martin and Tisha Michelle Martin; for turnover of property of the estate; and for sanctions against Debtors and their counsel

Docket 159

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

- #3.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Authorizing assumption and assignment of unexpired real property lease; and (4) Approving payment of commissions

Docket 145

**Tentative Ruling:**

**I. BACKGROUND**

On October 11, 2017, Mehri Akhlaghpour ("Debtor") filed a voluntary chapter 11 petition. On February 1, 2018, the Court issued an order directing the appointment of a chapter 11 trustee [doc. 101]. On February 6, 2018 Nancy J. Zamora was appointed the chapter 11 trustee (the "Trustee") [doc. 107].

On her schedule A/B, Debtor listed an ownership interest in a number of real properties. Among them were properties located at 26943 Hillsborough Pkwy, Unit 27, Santa Clarita, California 91354 (the "Hillsborough Property") and 8338 Woodley Pl., Unit 28, North Hills, CA 91343 (the "Woodley Property") (the Woodley Property and the Hillsborough Property together, the "Properties") [doc. 11, p. 7-8]. The Debtor did not list either of the Properties as exempt in her schedule C [doc. 11, p. 16].

On February 7, 2018, the Trustee filed an application to employ Rodeo Realty, Inc (the "Broker") as a real estate broker [doc. 110]. On February 26, 2018, the Trustee filed a declaration that no party requested a hearing on the motion.

On March 6, 2018, the Trustee filed a motion to sell the Hillsborough Property free and clear of liens, subject to overbid, and to assume and assign the unexpired lease on the Hillsborough Property (the "Hillsborough Motion") [doc. 145]. Also on March 6, 2018, the Trustee filed a motion to sell the Woodley Property free and clear of liens subject to overbid (the "Woodley Motion") (the Hillsborough Motion and the Woodley Motion together, the "Sale Motions") [doc. 146]

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

On March 22, 2018, creditor Seterus, Inc. as the authorized servicer for Federal National Mortgage Association ("Seterus"), filed a limited opposition to the Woodley Motion, consenting to the sale only insofar as the proceeds are enough to pay its lien in full (the "Limited Opposition") [doc. 154]. The Limited Opposition states that Seterus consents to the sale on the condition that in the event the sale proceeds are not enough to pay it in full, Seterus must provide written consent to the terms of the sale [doc. 154, p. 2].

Also on March 22, 2018, Debtor filed an omnibus opposition to the Sale Motions (the "Opposition") [doc. 159]. The Opposition attached two real estate appraisals. One appraisal estimates the market value of the Woodley Property at \$335,000-345,000 (the "Woodley Appraisal") [doc. 159-1, p.5]. The other appraisal estimates the market value of the Hillsborough Property at \$345,000-359,000 (the "Hillsborough Appraisal") [doc. 159-1, p. 34]. On March 29, 2018, the Trustee filed a reply to the Opposition (the "Reply") [doc. 162].

On March 22, 2018, the Trustee filed a third motion to sell Debtor's property located at 5454 Zelzah Avenue, #302, Encino, California, 91316 (the "Zelzah Property") [doc. 155].

## **II. DISCUSSION**

### *A. General Sale Standard*

Pursuant to 11 U.S.C. § 363(b)(1), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" subject to an exception that does not apply here. A trustee has broad authority to negotiate sales of estate property under 11 U.S.C. § 363(b)(1); *see also In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). In reviewing motions to sell property under § 363(b), a court must determine whether sound business reasons support the sale outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

### *B. Good Business Reason Justifying Sale*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Debtor objects to the sales of the Properties on the grounds that the Sale Motions propose to sell substantially all of the estate assets and are not supported by a good business justification. Debtor references *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983). In *Lionel*, the Second Circuit Court of Appeals outlined six factors for determining whether a good business reason exists justifying a sale of substantially all of the assets of the debtor.

The Trustee correctly asserts that *Lionel* is distinguishable because the chapter 11 trustee in *Lionel* sought authority to sell substantially all of the estate's assets. Here, the Sale Motions do not contemplate the sale of all or substantially all of the estate's property, because the estate owns four other properties not subject to the Sale Motions. In addition, the estate owns a 100% interest in eight business entities [doc. 11, pp. 11-12]. Even accounting for the Trustee's additional motion to sell the Zelzah Property, the Sale Motions will not result in the sale of substantially all of the estate property.

In addition, in *Lionel* the chapter 11 trustee did not give any business justification for the sale, other than the appeasement of the committee of largest creditors. *Id.* at 1071. Here, the Trustee has articulated a number of reasons for the sales, including that continued operation of the Properties as rental properties is not tenable, and that the prices are fair and reasonable.

Debtor also objects to the sales on the grounds that: (1) the sales are premature because the Properties are not wasting assets; (2) there is no justifiable cause for selling the Properties because the real estate market in the Los Angeles area is improving; and (3) the sale prices are inadequate.

Here, the sale motions are not premature. Debtor filed her chapter 11 petition nearly six months ago. Given that the marketing of the Properties generated multiple interested buyers, it appears that the sale prices reflect the market, and that the Properties have been marketed for enough time to generate competitive interest [doc. 162, pp. 6-7]. Furthermore, although the Properties are not "wasting assets," the inconsistent lease agreements Debtor has provided to the Trustee (and the lack of rent actually paid on the Woodley Property) do not support the contention that the Properties' income outweighs the expense of retaining them [doc. 162, Decl. of Nancy Zamora, ¶¶ 6-7].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

*C. The Trustee's Business Judgment*

As outlined by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"):

The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances. The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's.

*In re Lahijani*, 325 B.R. 282, 288–89 (9th Cir. B.A.P. 2005).

Debtor calls into question the Trustee's business judgment, stating that the Trustee lacks the "requisite business judgment in real estate" to consider, analyze and accept offers on the Properties. Contrary to Debtor's evaluation, the Trustee has been a chapter 7 trustee since 1998 and also has been a chapter 11 trustee in cases involving real estate. In those capacities, the Trustee has operated rental properties and sold over one hundred properties [doc. 162, Decl. of Nancy Zamora, ¶ 2]. Based on the Trustee's record of experience, she may properly be afforded the business judgment deference.

*D. Sufficient Marketing and Reasonableness of Price*

Debtor argues that the Properties have not been sufficiently marketed, because the prices contemplated in the Sale Motions are below market value. In support of this contention, Debtor points to the Woodley Appraisal and Hillsborough Appraisal (together, the "Appraisals") attached to the Opposition.

The Trustee is correct that the Appraisals are not persuasive evidence that the purchase prices are too low. First, each of the Appraisals is based on exterior inspections of the Properties, rather than thorough internal inspections [doc. 159, Exh. 1 and 2]. In addition, the Woodley Appraisal contains comparable sales in the same

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 05, 2018

Hearing Room 301

2:00 PM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

condominium complex as the Woodley Property which are *lower* than the sale price in the Woodley Motion [doc. 159-1, Exh. 1, p. 12]. Similarly, the Hillsborough Appraisal contains comparable sales in the same condominium complex as the Hillsborough Property which are lower than the sale price in the Hillsborough Motion [doc. 159-1, Exh. 2, pp. 41-42].

In addition, as explained in the Reply, the Broker has engaged in marketing efforts for the Properties, including listing the real property on the multiple listing service and on various internet sites that offer listing services. The Broker also conducted showings and appointments at the Properties and received three offers on the Hillsborough Property and 14 offers on the Woodley Property. As of the date of the Reply, the Broker continued to market the Properties to generate overbids. These efforts and offers not only establish that the real property has been thoroughly marketed, but also that the sale prices reflect the Properties' market values [doc. 162, pp. 6-7].

*E. Sub-Rosa Plan*

Debtor argues that the sale of the Properties, along with the sale of the Zelzah Property, would constitute an impermissible "sub-rosa" plan. Debtor further indicates that she believes that the Trustee must first establish that a plan is infeasible before liquidating assets.

In *Lionel*, the Second Circuit Court of Appeals considered a proposed pre-confirmation sale, noting that such a sale would be appropriate if there was an "articulated business justification" for it. *Lionel*, 722 F.2d at 1070.

Furthermore, the proposed sales do not take the place of a plan. After paying the allowed claims of creditors secured by the Properties, the Trustee is not proposing to distribute net proceeds to other creditors at this time [doc. 152, p. 16]. See *In re Air Beds, Inc.* 92 B.R. 419 (9th Cir. B.A.P. 1988). Consequently, the contemplated sales of the Properties do not constitute an impermissible "sub-rosa" plan.

*F. Due Process Considerations*

Debtor argues that the Sale Motions should not be approved because § 363 sales are an inappropriate violation of the due process rights of Debtor and creditors to the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

estate. However, Debtor and the estate's creditors have been served with notice of the sale, and have had an opportunity to object. Furthermore, the Trustee has demonstrated that the sale of the Properties will generate funds with which she can make distributions to creditors. Finally, pursuant to the overbid procedures built into the sale terms, Debtor and any other interested party has the opportunity to bid on the Properties. Consequently, Debtor has not demonstrated that any party in interest's due process rights have been violated.

**III. CONCLUSION**

The Court will grant the Sale Motions, subject to the Limited Opposition.

The Trustee should submit the orders within seven (7) days.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 05, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#4.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of liens and interests of Emymac; (2) Approving overbid procedure; and (3) Approving payment of commissions

Docket 146

**Tentative Ruling:**

See calendar no. 3.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12988 Parminder Singh**

**Chapter 13**

**#38.00** Motion to avoid junior lien on principal residence with  
15425 Sherman Way Homeowners' Association

Docket 32

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

**A. *The Debtor's Bankruptcy Cases***

Before filing the pending chapter 13 case, Parminder Singh (the "Debtor") filed five other bankruptcy cases. On September 2, 2011, the Debtor filed a chapter 13 petition, initiating case no. 1:11-bk-20602-MT (the "First Case"). On November 15, 2011, the First Case was dismissed for failure to make plan payments.

On November 9, 2011, the Debtor filed a chapter 13 petition, initiating case no. 2:11-bk-56556-NB (the "Second Case"). On December 27, 2011, the Second Case was dismissed at the Debtor's request.

On September 28, 2016, the Debtor filed a voluntary chapter 7 petition, initiating case no. 1:16-bk-12831-MT (the "Third Case"). A foreclosure sale of the Debtor's residence located at 15425 Sherman Way, Unit 354, Van Nuys, California 91406 (the "Property") had been scheduled for September 29, 2016. (Doc. 36, Exh. A.) On October 17, 2016, the Third Bankruptcy Case was dismissed for failure to file schedules, statements, and/or a plan.

On January 31, 2017, the Debtor filed a voluntary chapter 7 petition, initiating case no. 1:17-bk-10261-VK (the "Fourth Case"). A sheriff's sale of the Property had been scheduled for February 1, 2017. (Doc. 36, Exh. B.) On May 15, 2017, the Debtor received a chapter 7 discharge in the Fourth Case.

On August 30, 2017, the Debtor filed a chapter 13 petition, initiating case no. 1:17-bk-12305-MB (the "Fifth Case"). A foreclosure sale of the Property had been

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Parminder Singh**

**Chapter 13**

scheduled for August 31, 2017. (Doc. 36, Exh. C.) On September 18, 2017, the Fifth Case was dismissed for failure to file schedules, statements, and/or a plan.

On November 8, 2017, the Debtor filed a chapter 13 petition, initiating case no. 1:17-bk-12988-VK (the "Pending Case"). A foreclosure sale of the Property had been scheduled for November 9, 2017. (Doc. 36, Exh. D.) The Debtor acknowledges that because he received a discharge in the Fourth Case, he is not entitled to a discharge in the Pending Case. (Declaration of Parminder Singh, doc. 32, ¶ 6.)

***B. The First Lien Avoidance Motion***

In the Fourth Case, the Debtor listed the Property in his Schedule A/B. In his Schedule C, Debtor claimed a \$1 exemption in the Property pursuant to California Code of Civil Procedure § 703.140(b)(5). In his Schedule D, the Debtor listed the following encumbrances against the Property: (A) a consensual lien in favor of Bank of America in the amount of \$221,943.28; (B) a consensual lien in favor of the Los Angeles Housing Department in the amount of \$117,285; and (C) a lien in favor of 15425 Sherman Way Homeowners Association ("Creditor") in the amount of \$27,065.72. (Case no. 1:17-bk-10261-VK, doc. 1.)

On February 21, 2017, the Debtor filed a motion pursuant to 11 U.S.C. § 522(f) to avoid Creditor's lien (the "First Lien Avoidance Motion") [case no. 1:17-bk-10261-VK, doc. 14]. As evidence of Creditor's lien, the Debtor attached an abstract of judgment recorded on August 12, 2016, as instrument no. 20160957321 and a notice of delinquent assessment recorded on September 19, 2016, as instrument no. 20161134363 (the "2016 Lien"). (Case no. 1:17-bk-10261-VK, doc. 14, Exhs. 9, 10.)

On May 26, 2017, the Court entered an order denying the First Lien Avoidance Motion [case no. 1:17-bk-10261-VK, doc. 30]. In its ruling, the Court found that the 2016 Lien arose by operation of California Civil Code § 5650 *et seq.*, and that the 2016 Lien may not be avoided under 11 U.S.C. § 522(f) because it is not a judicial lien. (Case no. 1:17-bk-10261-VK, doc. 33, at p. 7.)

***C. The Debtor's Pending Case***

In the Pending Case, the Debtor again listed the Property on his Schedule A/B. In his Schedule D, the Debtor listed the following encumbrances against the Property: (A) a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Parminder Singh**

**Chapter 13**

consensual lien in favor of Bank of America in the amount of \$215,705.50 (the "BofA Lien"); and (B) a consensual lien in favor of the Los Angeles Housing Department in the amount of \$117,285 (the "LAHD Lien"). The Debtor did not list Creditor as holding a secured lien against the Property. Instead, in his Schedule E/F, the Debtor listed Creditor as holding a nonpriority unsecured claim in the amount of \$305. (Doc. 1, at pp. 25-26, 29.)

On December 13, 2017, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 22]. On February 1, 2018, the Plan was confirmed [doc. 28]. The Plan is a 100% plan. In accordance with the Plan, in addition to the payments specified to class 2 and class 4 secured creditors, the Debtor "will make regular payments, including preconfirmation payments, directly" to Creditor. (Doc. 22, at p. 7.) The Plan does not discuss the stripping of the Creditor's lien.

On February 2, 2018, before the deadline to do so, Creditor filed proof of claim no. 2, asserting a secured claim in the amount of \$10,102.02, arising from a notice of delinquent assessment recorded on September 19, 2016 against the Property, as instrument no. 20161134363. (Doc. 32, Exh. 9.) The proof of claim appears to be based on the 2016 Lien, which the Debtor unsuccessfully tried to avoid in the Fourth Case.

Attached to Creditor's proof of claim is an account history, with a start date of May 2, 2016 (the "Account History"), which shows the running balance of Creditor's claim. The Account History references several payments on August 4, 2017 which brought the claim balance down from \$37,323.82 to \$7,340.20. Subsequently, shortly before the filing of the Pending Case, the claim balance increased to \$10,102.02.

***D. The Second Motion to Avoid Lien***

On March 8, 2018, the Debtor filed the pending motion to avoid lien (the "Second Motion to Avoid Lien") [doc. 32]. In support of the Second Motion to Avoid Lien, the Debtor submitted an appraisal valuing the Property at \$260,000. (Doc. 32, Exh. 3.) The Debtor provided evidence that the BofA Lien was recorded on April 18, 2007 as instrument no. 20070927116, and has a balance of \$214,696.94.

The Debtor also provided evidence that the LAHD Lien was recorded on April 18, 2007 as instrument no. 20070927117, and has a balance of \$117,285.00. The deed of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Parminder Singh**

**Chapter 13**

trust evidencing the LAHD Lien contains a provision that states, "Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property, *which may attain priority over this Security Instrument.*" (Doc. 32, Exh. 6, p. 4 (emphasis added).)

The Debtor seeks to avoid in full the 2016 Lien, which the Debtor alleges is the third priority lien encumbering the Property. (Doc. 32, Exh. 9.) The Debtor contends that because the 2016 Lien is wholly unsecured, it can be avoided pursuant to 11 U.S.C. § 506(d).

In his declaration, the Debtor states that he scheduled Creditor's claim in the amount of \$305 as unsecured, because he was "under the impression that [Creditor] had released all of its liens against [his] property and, as a result of [his] 2017 Chapter 7 discharge, was only owed for post-Chapter 7 unpaid fees and dues accrued." (Declaration of Parminder Singh, doc. 32, ¶ 19.)

## **II. DISCUSSION**

### ***A. Effect of Chapter 7 Discharge***

Except as provided in 11 U.S.C. § 523, a chapter 7 discharge discharges an individual debtor:

from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. § 727(b).

In accordance with 11 U.S.C. § 523(a)(16), a discharge under section 727 does not discharge an individual debtor from any debt:

for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Parminder Singh**

**Chapter 13**

in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case [.]

In the Second Motion to Avoid Lien, the Debtor states that he scheduled Creditor's claim in the amount of \$305 as an unsecured claim because he believed that the Creditor had released all of its liens against the Property. Pursuant to § 523(a)(16), irrespective of the 2016 Lien, because the Debtor still has an interest in the Property, and received a discharge in the Fourth Case, fees and assessments charged by Creditor after the filing of the Fourth Case, *i.e.*, after January 31, 2017, are nondischargeable.

***B. Priority of the 2016 Lien***

Pursuant to California Civil Code ("C.C.") § 5675:

(a) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with subdivision (b) of Section 5650, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed.

(b) The itemized statement of the charges owed by the owner described in subdivision (b) of Section 5660 shall be recorded together with the notice of delinquent assessment.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

CONT...

**Parminder Singh**

**Chapter 13**

(c) In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale.

(d) The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(e) A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

C.C. § 5680 provides that "[a] lien created pursuant to Section 5675 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances." "Although section 1367 [predecessor statute to C.C. § 5680] does not mention conveyances filed before the assessment lien, there is no reason to believe the Legislature intended to deviate from the system of first in time, first in right." *Thaler v. Household Fin. Corp.*, 80 Cal. App. 4th 1093, 1100 (2000), *as modified* May 18, 2000 (finding that an homeowner association's assessment lien, recorded after a second priority deed of trust was recorded, was a third priority lien).

Creditor argues that the terms of the LAHD DOT provide for a subordination of LAHD Lien to the 2016 Lien. However, the LAHD DOT provides that "Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property, ***which may attain priority over this Security Instrument.***" (Emphasis added.) This appears to be a permissive provision that does not mandate that such taxes, assessments, charges, fines and impositions attributable to the Property ***will*** have superpriority over the LAHD Lien.

On the contrary, C.C. § 5680 provides that a homeowner association assessment lien will have priority over all subsequent liens, but that the lien declaration may provide for the subordination of the HOA lien to other liens. As the *Thaler* court noted, this statute does not address liens recorded before a homeowner association's assessment lien. Absent further authority or evidence, the Court cannot at this time determine that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Parminder Singh**

**Chapter 13**

the 2016 Lien in favor of Creditor has priority over the previously recorded LAHD Lien.

***C. Lien Stripping Pursuant to 11 U.S.C. § 506(d) in Chapter 13 Cases***

Creditor is correct that *Dewsnup v. Timm*, 502 U.S. 410, 418, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992) and *Bank of Am., N.A. v. Caulkett*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1995, 192 L.Ed.2d 52 (2015) prohibit lien stripping in chapter 7 cases pursuant to § 506(d). However, the Debtor's case is a chapter 13 case. A chapter 13 plan may "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[.] 11 U.S.C. § 1322(b) (2). Although § 1322(b)(2) prohibits stripping of liens secured only by a debtor's principal residence, Ninth Circuit authority allows a chapter 13 debtor to strip from a primary residence any junior liens that are wholly unsecured. *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1225 (9th Cir. 2002) ("Without a secured claim, a creditor's rights may be modified.").

Pursuant to 11 U.S.C. § 1327(a), "[t]he 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." "[O]nce a plan is confirmed, the plan binds the debtor and its creditors . . . so long as the debtor remains current under the plan." *In re Lemma*, 394 B.R. 315, 324 (Bankr. E.D.N.Y. 2008); *In re Hileman*, 451 B.R. 522, 524–25 (Bankr. C.D. Cal. 2011) (quoting *Lemma*).

Although confirmed plans are res judicata to issues therein, the confirmed plan has no preclusive effect on issues that . . . were not sufficiently evidenced in a plan to provide adequate notice to the creditor. In other words, if Chapter 13 plan provisions do not adequately identify a secured creditor's modified claims, to hold that the plan modified the claim "would be to allow lien stripping by ambush."

*Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

On February 1, 2018, the Plan was confirmed. The Plan is a 100% plan and provides that the Debtor "will make regular payments, including any preconfirmation

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Parminder Singh**

**Chapter 13**

payments, directly" to Creditor. Because the terms of the confirmed Plan are binding upon the Debtor, and there is no provision in the Plan regarding the stripping of the 2016 Lien, the 2016 Lien may not be stripped at this time. Even if the 2016 Lien were stripped, pursuant to 11 U.S.C. § 523(a)(16), the Debtor still would be liable to Creditor for all fees and assessments that have accrued since January 31, 2017.

**III. CONCLUSION**

In light of the foregoing, the Court will deny the Second Motion to Avoid Lien.

Creditor must submit an order within seven (7) days.

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

**Debtor(s):**

Parminder Singh

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10122 Orlando Velazco**

**Chapter 13**

**#39.00** Motion to avoid junior lien on principal residence with  
Deutsche Bank National Trust Company

Docket 15

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: Respondent has filed a notice of non-opposition. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Orlando Velazco

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10575 Aviva Rachel Harris**

**Chapter 13**

**#40.00** Motion to avoid junior lien on principal residence with  
Real Time Resolutions, Inc

Docket 10

**Tentative Ruling:**

Opposition filed by 2005 Residential Trust 3-2, LLC ("Respondent") disputing the value of the subject real property and seeking a continuance to conduct an appraisal. Continue hearing to **June 12, 2018, at 10:30 a.m.** On or before **May 29, 2018**, Respondent must file and serve an appraisal in support of Respondent's opposition.

**Party Information**

**Debtor(s):**

Aviva Rachel Harris

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:12-19663 Melissa Mallare Pontanilla and Joey Patrick Pontanilla**

**Chapter 13**

**#41.00** Trustee's motion to dismiss case due to expiration of the plan

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Melissa Mallare Pontanilla

Represented By  
Ali R Nader

**Joint Debtor(s):**

Joey Patrick Pontanilla

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16568 Adela Cabral**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for infeasibility of chapter 13 proceeding in that the plan will not pay out at its present plan payment amount

Docket 57

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Adela Cabral

Represented By  
William G Cort

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 3/13/18

Docket 70

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:13-17348 Grace Daniels Cervantes**

**Chapter 13**

**#44.00** Trsutee's motion to dismiss case for failure to make  
plan payments

Docket 184

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Grace Daniels Cervantes

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:13-17448 Richard Henriquez and Jamie Henriquez**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 101

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 3/26/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Richard Henriquez

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Jamie Henriquez

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-10334 Kurt Stromer**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 66

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kurt Stromer

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 101

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 3/26/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11699 Larry John Phillips and Clara Josephine Phillips**

**Chapter 13**

**#48.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 89

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Larry John Phillips

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Clara Josephine Phillips

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11870 Saundra Irene Price**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 42

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Saundra Irene Price

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-12270 Brenda Marie Perez**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brenda Marie Perez

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-12897 Mati Timor**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 132

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mati Timor

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14532 Juan Jose Medrano**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 116

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Jose Medrano

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15221 Vicki D Blumenthal**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 109

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vicki D Blumenthal

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 11/7/17; 1/9/18; 2/13/18

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-10893 Sarkis Derbeshyan**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 11/7/17; 12/12/17; 2/13/18; 3/13/18

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sarkis Derbeshyan

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11165 Jennifer Tagros Bolhayon**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 39

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Tagros Bolhayon

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12552 Constance Lee Duncan**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 69

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Constance Lee Duncan

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12702 LaDawn Opal Townsend**

**Chapter 13**

**#58.00** Trsutee's motion to dismiss case for failure to make  
plan payments

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

LaDawn Opal Townsend

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13042 Ericka Evalinda Mitchell**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 56

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ericka Evalinda Mitchell

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roy Glen Stout

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Sherri Sue Kirby-Stout

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13531 Rowena Magcalas Robinson**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 52

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 3/28/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Rowena Magcalas Robinson

Represented By  
William G Cort

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14007 Jose J Navarro and Julie A Navarro**

**Chapter 13**

**#62.10** Trustee's motion to dismiss case for failure to make plan payments

Docket 55

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose J Navarro

Represented By  
John D Monte

**Joint Debtor(s):**

Julie A Navarro

Represented By  
John D Monte

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#63.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 48

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brian Igbini

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#64.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 3/13/18

Docket 67

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11964 Norma L Salazar**

**Chapter 13**

**#65.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 32

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Norma L Salazar

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12190 Kathleen Sasha Aamodt Ward**

**Chapter 13**

**#66.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 59

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kathleen Sasha Aamodt Ward

Represented By  
Steven A Alpert

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12885 Daphne Singleterry**

**Chapter 13**

**#67.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 41

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Daphne Singleterry

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-13190 JeanPaul Reneaux**

**Chapter 13**

**#68.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

JeanPaul Reneaux

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10038 Oganesh Pashayan and Anahit Pashayan**

**Chapter 13**

**#69.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oganesh Pashayan

Represented By  
Abraham Dervishian

**Joint Debtor(s):**

Anahit Pashayan

Represented By  
Abraham Dervishian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10272 Janet Ann Marie Surmi**

**Chapter 13**

**#70.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Janet Ann Marie Surmi

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10475 Princess Fletcher**

**Chapter 13**

**#71.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 63

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Princess Fletcher

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10578 Deborah Denise Hyman**

**Chapter 13**

**#72.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 35

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Deborah Denise Hyman

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11537 Alfredo Feliciano, III and Myra Gomez Feliciano**

**Chapter 13**

**#73.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 28

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfredo Feliciano III

Represented By  
Nima S Vokshori

**Joint Debtor(s):**

Myra Gomez Feliciano

Represented By  
Nima S Vokshori

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**1:13-15351 Juan Venegas**

**Chapter 13**

**#74.00** Debtor's motion to be released from escrow and request for detailed accounting of payments

Docket 71

**Tentative Ruling:**

Deny without prejudice.

On August 14, 2013, Juan Venegas (the "Debtor") filed a chapter 13 petition. On November 19, 2013, the Debtor's plan (the "Plan") was confirmed [doc. 30]. Under the Plan, the Debtor was to pay \$786 per month for months 1 and 2, and then \$1,186 per month for the remaining months.

On March 13, 2018, the chapter 13 trustee filed a periodic accounting report in the Debtor's case (the "Report") [doc. 70]. The Report indicates that the most recent payments were received from the Debtor on February 13, 2018, in the amounts of \$1,000 and \$186. The Report also indicates that the remaining principal balance owed under the Plan is \$6,138.17.

On March 20, 2018, the Debtor filed the pending motion [doc. 71]. The motion is not accompanied by a declaration signed under penalty of perjury as to the facts stated. The Debtor states that he paid the chapter 13 trustee \$62,058.00. The Debtor further states that on March 8, 2018, he made his final payment of \$5,606.51. The Debtor requests that he be "released from escrow." The Debtor also requests a detailed accounting of payments made. He states that in 2015, he overpaid \$10,000. He paid over \$30,000 in one month but the amount due was \$17,000 plus \$2,900 "to pay for the lawyer of CitiMortgage." The Debtor requests reimbursement of his overpaid money.

The Debtor has not provided any evidence to contradict the Report, which indicates that the Debtor has not yet completed his payments under the Plan. The Debtor also has not indicated under what authority he seeks an accounting and turnover. It is also unclear if he seeks an accounting and turnover from CitiMortgage or from the chapter 13 trustee. Accordingly, the Court will deny the motion without prejudice.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Juan Venegas**

**Chapter 13**

The Court will prepare the order.

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

**Debtor(s):**

Juan Venegas

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**1:13-16424 Mark Pinsker and Melanie Pinsker**

**Chapter 13**

**#75.00** Motion for order discharging debtors pursuant to the hardship discharge provisions of 11 USC 1328

fr. 3/13/18

Docket 82

**Tentative Ruling:**

On March 13, 2018, the Court continued the hearing on this motion for the debtors to present further evidence of the good faith required for a motion to modify their plan, including: (1) their amended Schedules I and J showing their current budget; (2) an explanation of the way in which they will pay their outstanding income tax liabilities; and (3) proof of their ability to obtain the proposed loan for the full amount of their aggregate remaining plan payments, as calculated by the chapter 13 trustee (the "Trustee").

On March 13, 2018, the Trustee filed a periodic accounting report for the claims in this case (the "Status Report") [doc. 92]. That report shows a \$0 balance for priority tax debts owed to the IRS, and a total balance remaining of \$22,937.90.

On March 23, 2017, the debtors filed a supplemental response to the Trustee's objection to their motion (the "Supplemental Response") [doc. 93]. In his declaration attached to the Supplemental Response, Mr. Pinsker states that the debtors have tendered \$22,800 to the Trustee and that the debtors made an extra electronic payment of \$279 since the prior hearing [doc. 93, Decl. Mark Pinsker, ¶ 7]. The motion states that the amounts tendered to the Trustee are enough to cover the remaining plan payments to pay creditors 18% of their claims, as well as the outstanding tax liability for tax year 2014, which the Trustee has been paying from the debtors' chapter 13 plan payments.

The Supplemental Response attaches an account summary of the debtors' account with the Trustee, which appears to be current as of March 20, 2018 (the "Account Summary") [doc. 93, Exh. 1]. The Account Summary reflects that the debtors tendered the \$22,800 payment by cashier's check on March 14, 2018. The alleged

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Mark Pinsker and Melanie Pinsker**

**Chapter 13**

additional payment of \$279 is not apparent from the account summary.

The Supplemental Response also attaches a current budget, in the form of schedules I and J [doc. 93, Exh. 3]. The attached schedule I asserts that the debtors' current monthly income is \$5,850. The attached schedule J indicates that the debtors' average monthly expenses are \$9,066. Based on these amounts, the debtors assert that their monthly net income is (\$3,124). Consequently, the debtors' evidence of their average income and expenses adequately demonstrates the current inability to make plan payments going forward.

The Trustee should be prepared to address any outstanding objections to the motion, and whether the amounts which the debtors have tendered as of the hearing are adequate to cover the remaining payments under the debtors' chapter plan. If the Trustee has no objections, the Court will grant the motion.

Movants must submit the order within seven (7) days.

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

**Debtor(s):**

Mark Pinsker

Represented By  
David S Hagen

**Joint Debtor(s):**

Melanie Pinsker

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#76.00** Motion to turn over funds in the amount of \$10,065.55 to the debtors as it is property of the bankruptcy estate; request for attorney fees of \$2,500.00

fr. 3/13/18

Docket 95

**Tentative Ruling:**

Pursuant to the Court's prior ruling, the debtors timely filed a supplemental declaration [doc. 112]. In light of the evidence submitted, the Court will grant in part and deny in part the motion. Jose P. Ginez and Corazon S. Ginez ("Respondents") must turn over funds in the amount of \$8,065.55 to the debtors **no later than 35 days** after entry of the order. In addition, Respondents must pay the debtors' attorney fees in the amount of \$6,320.84 **no later than 35 days** after entry of the order.

The debtors must submit the order within seven (7) days.

**Ruling from 3/13/18**

Grant in part and deny in part.

**I. BACKGROUND**

Wells Fargo Bank, N.A. ("Wells Fargo") is the beneficiary of the first deed of trust encumbering 23842 Erin Place, Canoga Park, California 91304 (the "Property"), recorded on September 2, 2005 (the "First Trust Deed"). Jose P. Ginez and Corazon S. Ginez (together, "Respondents") are the original borrowers under the corresponding note and the trustors under the First Trust Deed. (Doc. 60, Exh. D.)

Wells Fargo is the beneficiary of the second deed of trust encumbering the Property, recorded on March 28, 2006 (the "Second Trust Deed"). Respondents are the original borrowers under the corresponding note and the trustors under the Second Trust Deed. (Doc. 60, Exh. C.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

On December 31, 2009, Romulo Gramata Bernardino and Ladinila Aspiras Bernardino (the "Debtors") purchased the Property from Respondents, pursuant to an "All-Inclusive Deed of Trust and Assignment of Rents" (the "Third Trust Deed"). Respondents are the beneficiaries and the Debtors are the trustors of the Third Trust Deed. On January 6, 2010, the Third Trust Deed was recorded. (Doc. 60, Exh. F.)

On March 24, 2014, the Debtors filed a chapter 13 petition. On December 17, 2014, the Court confirmed the Debtor's chapter 13 plan (the "Plan") [doc. 35]. The Plan provides for direct payment by the Debtors to Wells Fargo for arrearages owing on the First and Second Trust Deeds. Respondents were served with notice of the hearing on confirmation of the Plan.

On September 21, 2015, Ms. Ginez contacted the Debtor's bankruptcy attorney stating that she was a creditor of the estate and inquired as to how she would get paid through the bankruptcy. (Declaration of Kevin T. Simon ("Simon Decl."), ¶ 6.) On September 24, 2015, the Debtors filed a motion to avoid the Third Trust Deed (the "*Lam* Motion") [doc. 60]. On November 13, 2015, the Court entered an order approving the *Lam* Motion (the "*Lam* Order") [doc. 69]. The *Lam* Order provided that "no payments are to be made on the secured claim of the junior lienholder," and that the "claim of the junior lienholder is to be treated as an unsecured claim and is to be paid through the plan pro rata with all other unsecured claims." (Doc. 69, at p. 2.)

Because the Debtors purchased the Property with the Third Trust Deed, Respondents' name and address are on all loan documentation and statements from the First Trust Deed and the Second Trust Deed. (Simon Decl., ¶ 8.) The Debtors fell behind on the payment for the First Trust Deed, but continued to remit funds to Wells Fargo. After the Debtors defaulted on the First Trust Deed, Wells Fargo returned the mortgage payments to Respondents rather than the Debtors. (*Id.*, ¶ 9.)

On February 16, 2016, Wells Fargo issued a statement reflecting unapplied funds and a payment reversal of \$7,065.55, as well as unapplied funds of \$2,000.00. (Simon Decl., Exh. B.) On February 26, 2016, Wells Fargo mailed Respondents a letter with a check enclosed for \$1,000.00 advising Respondents the funds were returned because it was an insufficient amount to reinstate the loan. (Simon Decl., Exh. D.) On March 1, 2016, Respondents cashed the \$1,000.00 check from Wells Fargo. (Simon Decl., Exh. E.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras Chapter 13**

During the bankruptcy case, Respondents provided the Debtors with an "IOU" note reflecting payments received from returned checks from Wells Fargo in the amount of \$8,065.55 and crediting the Third Trust Deed with the same amount. (Simon Decl., Exh. F.)

**II. RELEVANT LAW**

***A. Property of the Estate***

Pursuant to 11 U.S.C. § 541(a)(1),

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (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.

In addition, for chapter 13 debtors, pursuant to 11 U.S.C. § 1306(a):

Property of the estate includes, in addition to the property specified in section 541 of this title—

- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and
- (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

***B. Turnover of Estate Property***

Pursuant to 11 U.S.C. § 542—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, April 10, 2018

Hearing Room 301

11:30 AM

CONT...

**Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

(a) 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.

...

(c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

Chapter 13 debtors have standing to assert the turnover right on the estate's behalf. *In re Lyle*, 324 B.R. 128 (Bankr. N.D. Cal. 2005) (chapter 13 debtor); *see also In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010). Property subject to a turnover action is limited to identifiable estate property and money due to the debtor without dispute. *See In re Newman*, 487 B.R. 193, 202 (9th Cir. B.A.P. 2013).

*Turnover rights are effective against an entity that possesses or controls estate property at any point during pendency of the bankruptcy case. Shapiro v. Henson*, 739 F.3d 1198, 1199 (9th Cir. 2014). An entity need not actually possess the property when the turnover action is filed, provided the entity possessed estate property at some time during the bankruptcy case. *See In re Newman*, 487 B.R. at 202 (ordering a debtor who received and spent a tax refund postpetition to pay the chapter 7 trustee prorated portion of refund attributable to income earned prepetition).

**C. Effect of Plan Confirmation**

Pursuant to 11 U.S.C. § 1327(a), "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan."

***D. Violation of the Automatic Stay***

11 U.S.C. § 362 provides in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—

- (1) The commencement or continuation, including the issuance or employment 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.
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or a recover a claim against the debtor that arose before the commencement of the case;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**  
against the debtor...

**Chapter 13**

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). An affirmative duty is imposed on non-debtor parties to comply with the stay, and to remedy any violations, even if inadvertent, of the automatic stay. *In re Dyer*, 322 F.3d 1178, 1191–92.

11 U.S.C. § 362(k)(1) provides the following:

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Thus, a prima facie case under section 362(k) requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay. *In re Fernandez*, 227 B.R. 174, 181 (9th Cir. B.A.P. 1998).

The automatic stay "is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions . . . in nonbankruptcy fora against the debtor . . .". *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). "When there has been a violation of the automatic stay through the prosecution of state court litigation, the non-debtor parties have an affirmative duty to dismiss or stay the proceedings that give rise to the violation." *In re Garner*, 2011 WL 10676932, at \*3 (Bankr. E.D. Cal. June 8, 2011); *see also Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002).

"The maintenance of an active collection alone adequately satisfies the statutory prohibition against 'continuation' of judicial actions." *Eskanos*, at 1215. "To comply with [the] 'affirmative duty' under the automatic stay, [the creditor] 'needed to do what he could to relieve the violation.'" *Garner*, at \*3 (quoting *Sternberg v. Johnston*, 595 F.3d 937, 945 (9th Cir. 2010)).

In *Garner*, a creditor obtained a judgment against the debtor during the pendency of the bankruptcy case, but before the creditor had received notice of the bankruptcy filing. *Id.*, at \*1–2. Upon obtaining notice, the creditor did nothing to reverse the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

prohibited actions taken while the automatic stay was in effect. *Id.* The bankruptcy court found a violation of the automatic stay:

That being said, there is no dispute that Teran knew about the bankruptcy and the automatic stay when he received the letter from the Debtors' attorney about two weeks after the Judgment was entered. At that point, Teran had an affirmative duty to "unwind" what had happened in the small claims court, but he failed to take any remedial action. Teran contends that he did not respond to the letter because he did not know what to do. However, that does not change the fact that the failure to act was itself a violation of the automatic stay.

*Id.* at \*4.

Under § 362(k)(1), above, an individual injured by a willful violation of the stay may recover "actual damages, including costs and attorneys' fees." 11 U.S.C. § 362(k)(1). The debtor "can recover as actual damages only those attorney fees related to enforcing the automatic stay and remedying the stay violation." *Sternberg*, 595 F.3d at 940; *see also In re Schwartz-Tallard*, 765 F.3d 1096, 1102 (9th Cir. 2014) (allowing the debtor to recover attorneys' fees incurred defending an appeal of the bankruptcy court's finding of a stay violation).

### **III. DISCUSSION**

#### ***A. Turnover of Estate Property***

Under § 541(a)(1) and § 1306(a)(2), the funds at issue are identifiable bankruptcy estate property and subject to turnover. In addition, the amount of the funds received by Respondents is not of inconsequential value to the estate. Respondents possessed and controlled estate property that the Debtors may use, sell, or lease during the pendency of the bankruptcy case.

In addition, Respondents had actual knowledge of the Debtors' bankruptcy case. On September 21, 2015, Ms. Ginez contacted the Debtors' attorney to inquire "how she should go about getting paid through the bankruptcy." Respondents also received actual notice of the Debtors' bankruptcy case because they were served notice of the Plan confirmation hearing, the *Lam* Motion and the *Lam* Order. As such, the turnover

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

requirements under § 542 apply to Respondents.

The Plan was confirmed on December 17, 2014 and provided that the Debtors would pay Wells Fargo through the Plan to cure arrearages on the First Trust Deed and Second Trust Deed. Pursuant to § 1327, the provisions of the confirmed Plan bind each creditor, including Respondents. As such, pursuant to the confirmed Plan, Respondents were not entitled to retain the monies paid by the Debtors to Wells Fargo pursuant to the Plan.

Furthermore, pursuant to the *Lam* Order, no monies were to be paid to Respondents after the Third Trust Deed was avoided. Respondents' claim was to be paid through the Plan pro rata with all other unsecured claims. Thus, Respondents were not entitled to any of the monies returned by Wells Fargo.

The Motion seeks turnover of funds totaling \$10,065.55. However, the evidence attached to the Motion shows that Respondents cashed checks totaling \$8,065.55. Although there is a bank statement showing \$2,000 in unapplied funds, it is unclear whether Wells Fargo ever sent those funds to Respondents. Consequently, if Debtors seek turnover of this additional \$2,000, the Debtors must submit evidence showing that Respondents obtained possession of the other \$2,000.

***B. Violation of the Automatic Stay***

Here, Respondents violated the automatic stay by exercising control over property of the estate. It appears from the "IOU" note that Respondents were under the impression they could retain the money and credit it towards the debt owed to them. However, by retaining the checks and subsequently cashing them, Respondents exercised control over estate property in violation of § 362(a)(3). See *In re Lyle*, 324 B.R. 128; *In re Carlsen*, 63 B.R. 706, 711 (Bankr. C.D. Cal. 1986) (finding that the IRS violated both the automatic stay and the turnover requirements when it failed to return a check to the County after learning of the debtor's bankruptcy).

The violation of the automatic stay was willful because Respondents had actual knowledge of the Debtors' bankruptcy case at the time they retained the funds. "[T]he failure to return property of the estate with knowledge of the bankruptcy is a violation of both the automatic stay and of the turnover requirements of the Bankruptcy Code." *Abrams v. Sw. Leasing and Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-43 (9th

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras Chapter 13**

Cir. B.A.P. 1991) (continuing retention by the creditor of repossessed vehicle after receiving notice of bankruptcy violated automatic stay); *see also In re Treasures, Inc.*, Case No. SC-13-1304, 2015 WL 925957, at \*21 (9th Cir. B.A.P. Mar. 3, 2015) (continuing retention of property of the bankruptcy estate violated the automatic stay). To preserve the "status quo" of the bankruptcy, Respondents would have had to return the funds to the Debtors or to Wells Fargo in order to relieve their violation. Respondents did not do so.

Accordingly, the Court will grant the Debtor's request for damages pursuant to § 362 (k)(1). The Debtors do not include a breakdown of damages incurred as a result of the willful violation of the stay. The Debtors must supplement the Motion with an statement of actual damages, fees, and costs incurred.

Notwithstanding the foregoing, it does not appear that Respondents' conduct warrants punitive damages. The Court will deny the Debtors' request for punitive damages.

**IV. CONCLUSION**

In light of the foregoing, the Court will grant in part and deny in part the Motion. **No later than March 27, 2018**, the Debtors must file a supplemental declaration with (i) evidence that Respondents possessed monies in excess of \$8,065.55, and (ii) evidence regarding actual damages, fees, and costs incurred while litigating this matter.

The Debtors must submit the order within seven (7) days.

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

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**1:17-13138 John Orlanes Case and Lourdes Halili Case**

**Chapter 13**

**#77.00 Chapter 13 trustee's objection to debtor's claim of homestead exemption**

Docket 18

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtors filed an amended Schedule C to claim an exemption in the amount of \$100,000 under California Code of Civil Procedure ("C.C.P.") § 704.730(a)(2) in the debtors' real property located at 11370 Villa del Sol, Pacoima, CA 91331-1859 [doc. 24]. The debtors are no longer claiming a homestead exemption pursuant to C.C.P. § 703.140(b)(5). Consequently, the Court will overrule the chapter 13 trustee's objection without prejudice.

The chapter 13 trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

John Orlanes Case

Represented By  
Lawrence B Yang

**Joint Debtor(s):**

Lourdes Halili Case

Represented By  
Lawrence B Yang

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Tuesday, April 10, 2018

Hearing Room 301

11:30 AM

1:18-10345 Erika Krayndler

Chapter 13

#78.00 Motion for imposition of 180day bar on debtor from being a debtor in any subsequent bankruptcy under 11 USC 105(a)

**stip filed 3/30/18**

Docket 37

**\*\*\* VACATED \*\*\* REASON: Order approving stip to dismiss motion entered on 3/30/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Erika Krayndler

Represented By  
Walter Scott

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10465 Ziv Kanon**

**Chapter 13**

**#79.00** Debtor's motion for order compelling turnover of property of the estate (business personal property)

**stip filed 3/26/18**

Docket 20

**Tentative Ruling:**

Deny, for the reasons set forth below.

**I. BACKGROUND**

On February 21, 2018, at approximately 12:45 p.m., Ziv Kanon ("Debtor") filed a chapter 13 petition. In his schedule A/B, Debtor stated that he operates a sole proprietorship repair and resale business specializing in heavy equipment such as forklifts called HD World Equipment [doc. 10, p. 16].

On March 20, 2018, Debtor filed his motion for an order compelling turnover of property of the estate (the "Motion") [doc. 20]. In the Motion, Debtor explains that he operated his business on premises owned by Mark and Doris Wurzel and the Wurzel Family Trust ("Wurzel"). Wurzel previously obtained an unlawful detainer judgment against Debtor, which was stayed multiple times pursuant to stipulations between Debtor and Wurtzel [doc. 20, Exh 1, 2, 4].

Debtor states that pursuant to a stipulation to continue the stay of the unlawful detainer judgment (the "October Stipulation") [doc. 20, Exh. 4], Debtor made payments to continue occupying the property through February 15, 2018. The October Stipulation stated that "anything left behind after moveout [sic] will belong to [Wurzel] and may be disposed of without notice." On October 5, 2017, the Superior Court of California, County of Los Angeles approved the October Stipulation and entered it as a judgment [doc. 20, Exh 4].

Debtor asserts that he was in discussions with Wurzel to extend his move-out date as of February 15, 2018. When the move-out date passed, Wurzel had Debtor evicted by

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Ziv Kanon**

**Chapter 13**

the sheriff on February 21, 2018 at 8:30 a.m. [doc. 29, Wurzel Decl., ¶ 11] (doc. 29, Exh. 12, which is the sheriff's report of eviction, states that the lockout occurred on February 20, 2018, Wurzel states that the eviction actually occurred on February 21). Debtor alleges that his construction equipment (the "Equipment") was on Wurzel's property at the time of the lockout.

On April 2, 2018, Wurzel filed an opposition to the Motion (the "Opposition") [doc. 29]. In the Opposition, Wurzel asserts that Debtor forfeited his interest in the Equipment (if any) under the terms of the October Stipulation because he did not remove it before the lockout.

In addition, Wurzel asserts that Debtor has taken inconsistent positions with respect to the Equipment [doc. 29, Wurzel Decl., ¶ 7]. On May 9, 2017, in an email to Mark Wurzel from the HD World Equipment email address, Dorit Kanon (Debtor's non-filing spouse) stated that "there are more than 20 different individual, financial institutes [sic] and other owners" who have an interest in the "personal property" on Wurzel's lot [doc. 29, Exh. 8]. In addition, on May 9, 2017, in a facsimile communication to Wurzel's state court counsel, Debtor's state court counsel stated: "there are a lot [sic] of machines on the property that may be owned by other companies" [doc. 29, Wurzel Decl. ¶ 7; Exh. 9].

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 541—

- (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
  - (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.

Pursuant to 11 U.S.C. § 542—

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, April 10, 2018

Hearing Room 301

11:30 AM

CONT...

**Ziv Kanon**

**Chapter 13**

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 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.

"A turnover proceeding is 'not intended as a remedy to determine the disputed rights of parties to property; rather it is intended as the remedy to obtain what is acknowledged to be property of the bankruptcy estate.'" *In re Century City Doctors Hosp., LLC*, 466 B.R. 1, 19 (Bankr. C.D. Cal. 2012) (quoting *Lauria v. Titan Sec. Ltd.*, 243 B.R. 705, 708 (Bankr. N.D. Ill. 2000). *See also In re Gurga*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (citations omitted) ("turnover proceedings involve return of *undisputed* funds"). "In order to maintain a motion for turnover, the burden of proof is upon the party seeking the turnover." *In re Bloom*, 91 B.R. 445, 446 (Bankr. N.D. Ohio 1988).

*1. Requirement of an Adversary Proceeding*

As an initial matter, pursuant to Federal Rule of Bankruptcy Procedure 7001 (1), a proceeding to recover money or property must be filed as an adversary proceeding. *See Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) ("a turnover action is an adversary proceeding which must be commenced by a properly filed and served complaint"). Consequently, the Motion is procedurally improper.

*2. Disputed Right to Property*

Even if the procedural roadblock to turnover was not present, the Motion would nevertheless be inappropriate. Turnover motions involve the return of *undisputed* property. *Gurga*, 176 B.R. at 199. Here, the parties dispute the ownership of the Equipment at the time Debtor filed the petition, and it is not evident that Debtor currently has an interest in the Equipment.

**III. CONCLUSION**

The Court will deny the Motion.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Ziv Kanon**

**Chapter 13**

Respondent must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11523 Shamel Sanani and Farideh Sanani**

**Chapter 7**

**#1.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTORS

fr. 2/21/18; 3/14/18

Docket 100

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:14-10077 Oksana Grigorieva**

**Chapter 13**

**#2.00** Motion for relief from stay [AN]

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT  
VS  
DEBTOR

fr. 1/10/17; 1/24/18

**Stip to continue filed 3/8/18**

Docket 68

**\*\*\* VACATED \*\*\* REASON: Order entered 3/12/18 continuing hearing  
to 5/16/18 at 9:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Oksana Grigorieva

Represented By  
Daren M Schlecter  
Jeff Neiderman

**Movant(s):**

White Zuckerman Warsavsky Luna

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION  
VS  
DEBTOR  
fr. 3/7/18

**STIP filed 3/13/18**

Docket 51

\*\*\* VACATED \*\*\* REASON: APO entered 3/13/18

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Movant(s):**

U.S. Bank Trust National

Represented By  
Robert P Zahradka

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 11, 2018

Hearing Room 301

9:30 AM

1:17-11588 Christopher Ivo Joseph Silveira

Chapter 13

#4.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 3/7/18

**Stip for adequate protection filed 3/13/18**

Docket 21

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
3/13/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Ivo Joseph Silveira

Represented By  
William G Cort

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

fr. 1/24/18; 3/7/18

Docket 47

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#6.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 3/7/18

Docket 45

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10314 Mitchell S. Cohen**

**Chapter 13**

**#7.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 2/28/18

Docket 6

**Tentative Ruling:**

If the debtor is current on payments under his second amended chapter 13 plan [doc. 30] and on his postpetition deed of trust payments as of the hearing date, the Court will grant the motion on a final basis pursuant to the terms of the interim order on the motion [doc. 28].

The debtor must submit the order within seven (7) days.

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

**Debtor(s):**

Mitchell S. Cohen

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10429 Yunsin Jun**

**Chapter 7**

**#8.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Yunsin Jun

Represented By  
Gregory M Shanfeld

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 11, 2018

Hearing Room 301

9:30 AM

1:18-10431 Fredy A Cigarroa and Angela Beatriz Santos Miron

Chapter 7

#9.00 Motion for relief from stay [PP]

GATEWAY ONE LENDING & FINANCE  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Fredy A Cigarroa

Represented By  
Harout G Bouldoukian

**Joint Debtor(s):**

Angela Beatriz Santos Miron

Represented By  
Harout G Bouldoukian

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10690 Nestor Guevara**

**Chapter 13**

**#10.00** Motion for relief from stay [UD]

U.S. BANK, N.A.  
VS  
DEBTOR

Docket 4

**Tentative Ruling:**

Grant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2) and (d)(4), and annulment of the automatic stay pursuant to § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

Grant movant's request to annul the automatic stay. "Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re Nat'l Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Here, movant was unaware of the debtor's bankruptcy petition before March 19, 2018, and the debtor acted unreasonably in a way that has prejudiced movant. Regarding movant's awareness, movant submitted a declaration attesting to the following facts:

On June 15, 2017, after a trustee's sale, movant acquired an ownership interest in the real property located a 53 Stagecoach Road, Bell Canyon, CA 91307 (the "Property"). (Unlawful Detainer Declaration,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Nestor Guevara**  
¶ 5a., Exh. A.)

**Chapter 13**

On July 9, 2017, movant served a Notice to Quit on the debtor and his co-occupants (the “Notice to Quit”). The Notice to Quit states that the Property was sold at foreclosure and that movant intended to evict any occupants. (*Id.*, ¶ 7b., Exh. B.)

On October 11, 2017, movant filed an unlawful detainer complaint in state court against the debtor and his co-occupants. (*Id.*, Exh. C.) On February 16, 2018 and without movant’s knowledge, the debtor removed the unlawful detainer action (the “UD Action”) to the district court of the Central District of California.

On February 20, 2018, the state court entered an unlawful detainer judgment against the debtor and his co-occupants (the “February 20 Judgment”). (*Id.*, Exh. D.) On March 2, 2018, the district court remanded the UD Action. (*Id.*, Exh. E.) On March 19, 2018, without knowledge of the debtor’s bankruptcy filing, the state court entered an order vacating the February 20 Judgment and entering a subsequent order and judgment (the “March 19 Judgment”). (*Id.*, Exh. F.)

With respect to the debtor’s conduct, in his petition the debtor listed movant’s counsel as a creditor in his mailing list, but did not list movant. The debtor has not yet filed schedules in his pending case. On January 7, 2018, the debtor filed a prior chapter 13 case, case no. 1:18-bk-10044-MB (the “Prior Case”). On January 17, 2018, movant filed in the Prior Case a motion for relief from the automatic stay as to the Property (the “Prior RFS Motion”) [case no. 1:18-bk-10044-MB, doc. 8]. On February 8, 2018, the bankruptcy court in the Prior Case entered an order granting the Prior RFS Motion (the “Prior RFS Order”) [case no. 1:18-bk-10044-MB, doc. 13]. On March 30, 2018, the Prior Case was dismissed because the debtor did not file schedules, statements, or a plan [case no. 1:18-bk-10044-MB, doc. 19].

On March 28, 2018, the debtor filed an opposition to the pending motion [doc. 10]. In the opposition, the debtor alleges that he has been employed intermittently for the last 6 months. He intends to obtain employment to pay his debts through a chapter 13

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Nestor Guevara**

**Chapter 13**

plan. The debtor states that on March 18, 2018 at 10:26 p.m., his counsel faxed notice of the debtor's bankruptcy to movant's counsel. (Doc. 10, Exh. A.)

Based on the foregoing, and notwithstanding the debtor's opposition, it appears that the Prior Case and the debtor's fax to movant one day before entry of the March 19 Judgment were part of an effort to hinder movant's eviction proceedings. For these reasons, the Court finds that annulment of the automatic stay is warranted.

In addition, the Court finds that relief from the automatic stay is warranted pursuant to 11 U.S.C. § 362(d)(4). 11 U.S.C. § 362(d)(4) provides:

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 conditioning such stay—

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Nestor Guevara**

**Chapter 13**

notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

Based on the facts noted above, the Court concludes that the debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors. The filing and subsequent dismissal of the Prior Case, the entry of the Prior RFS Order, and the removal and subsequent remand of the UD Action justify the provision of *in rem* relief pursuant to 11 U.S.C. § 362(d)(4).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Nestor Guevara

Represented By  
Lee M Linson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12088 Jesse Magpantay**

**Chapter 13**

**#11.00** Motion for relief from stay [RP]

MTGLQ INVESTORS, L.P.  
VS  
DEBTOR

Docket 39

**\*\*\* VACATED \*\*\* REASON: Order ent 4/4/18 approving stip for  
adequate protection**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jesse Magpantay

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13145 Josefina Galindo**

**Chapter 13**

**#12.00** Motion in individual case for order confirming termination of stay under 11 U.S.C. 362(c)(3) or that no stay is in effect under 11 U.S.C. 362(c)(4) (A)(ii)

Docket 29

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 4/3/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Josefina Galindo

Represented By  
Sara E Razavi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10661 Andres Salcedo, Jr.**

**Chapter 13**

**#13.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 13

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Andres Salcedo Jr.

Represented By  
Nicholas M Wajda

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10689 Geraldine S Frost**

**Chapter 13**

**#13.10** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

**Tentative Ruling:**

Grant motion on an interim basis and continue hearing to **June 7, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed. Under 11 U.S.C. 362(c)(3)(C)(i)(III), a case is presumptively filed not in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a chapter 7 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

On January 18, 2018, the debtor filed a prior chapter 13 petition [case no. 1:18-bk-10095-VK]. In her prior schedules, the debtor disclosed monthly income in the amount of \$5,289.50 and monthly expenses in the amount of \$5,009.00, leaving net monthly income of \$280.50. (Case no. 1:18-bk-10095-VK, doc. 15, at p. 27.) In her prior plan, the debtor's proposed plan payment was \$280.50 for 6 months, then \$377.73 per month for 54 months. (Case no. 1:18-bk-10095-VK, doc. 23, at p. 3.)

In her pending case, the debtor's Chapter 13 Calculation of Your Disposable Income (Official Form 122C-2) states that her disposable income is \$0. (Doc. 22, at p. 7.) In her chapter 13 plan, the debtor proposes a monthly payment of \$280.50 for 2 months, then \$842.51 for 58 months. (Doc. 5, at p. 2.) In her declaration, the debtor alleges that she paid Cedar Green Services ("Cedar Green") to assist her with saving her real property. The debtor states that Cedar Green took her money without contacting her lender. The debtor hopes to rent out her real property to generate income to pay her secured lender.

Notwithstanding these assertions and the lack of an opposition to her motion, the debtor has not provided at this time clear and convincing evidence that her financial

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Geraldine S Frost**

**Chapter 13**

affairs have improved since her prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. The debtor has provided no evidence that she has sufficient net monthly income to fund a chapter 13 plan. She has provided no evidence she will be able to generate sufficient income by renting her property.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than May 10, 2018**, the debtor must file and serve notice of the continued hearing on *all* secured creditors. The debtor must (i) timely tender her postpetition deed of trust payments to Mr. Cooper in the amount of \$2,105 (as stated in her Chapter 13 Calculation of Your Disposable Income (Official Form 122C-2)) as to the real property located at 6111 Greenbriar Drive, Fayetteville, PA 17222; (ii) timely tender her chapter 13 plan payments in the amount of \$280.50 to the chapter 13 trustee; and (iii) file a declaration *supported by admissible evidence* that renting the property will generate sufficient income to fund a chapter 13 plan. **No later than May 24, 2018**, the debtor must file a declaration to demonstrate that she made her postpetition deed of trust and chapter 13 plan payments.

The Court will prepare the order.

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

**Debtor(s):**

Geraldine S Frost

Represented By  
Shirlee L Bliss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#14.00** Motion for relief from stay [PP]

MESSAGE ENVY FRANCHISING, LLC  
VS  
DEBTOR

Docket 232

**Tentative Ruling:**

In light of the agreement between the parties regarding the sale of the debtors' assets, the parties must inform the Court whether the pending motion for relief from the automatic stay has been rendered moot.

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#15.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#16.00** Status conference re: complaint to determine nondischargeability  
of debt (11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B))

fr. 3/7/18

Docket 1

**Tentative Ruling:**

What is the status of the order regarding the plaintiff's *Motion for Default Judgment*?  
See the Court's ruling, doc. 22.

**Party Information**

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By  
Richard W Snyder

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

1:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #16.10** Status conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18

Docket 30

**Tentative Ruling:**

On February 21, 2018, this Court issued a ruling granting in part and denying in part the plaintiff's motion for summary judgment [doc. 47]. What is the status of the order regarding that motion?

In its status report [doc. 50], the plaintiff indicated that it wishes to proceed with trial regarding its § 727 claims, in advance of trying its other claims. In light of the status report, the Court will continue this status conference for the parties to file a joint pretrial stipulation regarding the plaintiff's § 727 claims, **in accordance with Local Bankruptcy Rule 7016-1 ("LBR")**, as follows:

Deadline to complete and submit pretrial stipulation: **May 7, 2018**.

This status conference will be continued as a pretrial conference to **May 17, 2018 at 1:30 p.m.**

The plaintiff has stated that it has had difficulties communicating with the defendants and that the defendants were unresponsive to its attempts to meet and confer [doc. 12]. Pursuant to LBR 7016-1(c), it is the plaintiff's duty to prepare and sign a proposed pretrial stipulation that is complete in all respects except for the other party's list of exhibits and witnesses. The plaintiff must serve the proposed pretrial stipulation in such a way that it will actually be received by the defendants no later than 4:00 p.m. on the 7th day prior to the last day for filing the proposed pretrial stipulation.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Within three (3) days of receipt of the plaintiff's proposed pretrial stipulation, if the defendants find it satisfactory, they must attach their list of exhibits and witnesses to the pretrial stipulation, indicate approval of the proposed pretrial stipulation by signature and file it by the deadline set forth above. Alternatively, in the event that the defendants find the plaintiff's proposed pretrial stipulation unsatisfactory, the defendants must immediately contact the plaintiff in a good faith effort to achieve a joint proposed pretrial stipulation.

If the plaintiff does not receive a timely response from the defendants, it must file and serve a proposed pretrial stipulation by the deadline referenced above, along with a declaration asserting the failure of the defendants to respond.

In accordance with LBR 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

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

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 11, 2018

Hearing Room 301

2:30 PM

**1:17-11026 Donnabelle Escarez Mortel**

**Chapter 7**

Adv#: 1:17-01065 UL LLC v. Mortel

**#17.00** Plaintiff UL LLC's motion for summary judgment or, in the alternative, partial summary judgment against debtor Donnabelle EscarezMortel

Docket 14

**Tentative Ruling:**

Grant, for the reasons set forth below.

**I. BACKGROUND**

**A. The District Court Litigation**

*1. Trademark Infringement*

UL LLC ("Plaintiff") is a certification company which tests, inspects and certifies products and develops safety standards. Plaintiff's Request for Judicial Notice ("RJN"), Exhibit 1, ¶¶ 13-15. Plaintiff owns a certification mark which Plaintiff allows its authorized customers to use on their products to indicate that they have been tested and certified as safe by Plaintiff. *Id.*

On November 2, 2016, Plaintiff filed a complaint (the "District Court Complaint") against The Space Chariot, Inc. ("Space Chariot"), Kevin Walker ("Walker") and Donnabelle Escarez Mortel ("Debtor") (Space Chariot, Walker and Debtor collectively, the "Defendants") in the United States District Court for the Central District of California entitled *UL LLC v. The Space Chariot, Inc., et al.*, Case No. 2:16-CV-01872-CAS (AFMX) (the "District Court Action"). RJN, Exhibit 1; Plaintiff's Statement of Uncontroverted Facts ("SUF"), ¶ 1.[EN1] The complaint in the District Court Action alleged that the Defendants willfully and deliberately infringed on Plaintiff's trademark and counterfeited its certification mark. RJN, Exhibit 1.[EN2] The complaint explained that Defendants were in the business of selling two-wheeled scooters called hoverboards, and had used Plaintiff's mark to certify that their products were safe before any safety standard for self-balancing scooters existed. RJN, Exhibit 1, ¶ 39.[EN3] Debtor appeared in the District Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

Action and was represented by counsel. SUF ¶ 2; *see, e.g.* RJN, Exhibit 2 and 4.

On February 22, 2017, Plaintiff moved for partial summary judgment regarding its claims for federal trademark infringement pursuant to 15 U.S.C. § 1114 and counterfeit of registered mark pursuant to 15 U.S.C. § 1114. SUF ¶ 3; RJN, Exhibit 3. Debtor opposed the motion. SUF ¶ 4; RJN, Exhibit 4. On April 19, 2017, Walker and Debtor filed a notice in the District Court Action that they had petitioned for bankruptcy. RJN, Exhibit 6, p. 2. On April 20, 2017, the District Court issued a ruling granting Plaintiff's summary judgment motion on both claims only as against Space Chariot because the action was stayed as to Walker and Debtor, but discussing the actions of all Defendants (the "Trademark Ruling"). SUF, ¶ 5; RJN, Exhibit 5.

On June 20, 2017, Plaintiff filed a notice that the bankruptcy court lifted the stay in the District Court Action. On July 7, 2017, the District Court issued a ruling incorporating the Trademark Ruling as against Debtor and Walker, stating that the findings and conclusions therein "applied equally to Walker and [Debtor]." RJN, Exhibit 6, p. 3. In the order entering judgment against Walker and Debtor (the "Judgment"), the District Court stated that Walker and Debtor engaged in "willful, deliberate and unjustifiable counterfeiting of Plaintiff's trademarks." SUF, ¶ 6, RJN, Exhibit 7, p. 2. The District Court entered judgment for Plaintiff against Defendants for \$1,000,000 in statutory damages, plus prejudgment interest and costs. RJN, Exhibit 6 and 7. Walker and Debtor are "jointly and severally liable for damages" to Plaintiff. RJN, Exhibit 6.

*2. Contempt*

On November 17, 2016, the District Court issued a temporary restraining order (the "TRO") ordering Defendants to: (1) cease all counterfeiting and shut down Space Chariot's website; (2) not disburse any company or personal assets; and (3) freeze all assets except reasonable living and business expenses [doc. 14, p. 8]. On December 9, 2016, the parties stipulated to a preliminary injunction (the "Preliminary Injunction") which required Debtor to: (1) not disperse any business or personal assets; (2) provide an accounting of all assets over \$5,000, (3) provide monthly accountings of personal and business expenses; (4) freeze all assets; and (5) produce bank statements [doc. 14, p. 8].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

On March 7, 2017, Plaintiff moved the District Court for an order of civil contempt and sanctions against Defendants. SUF ¶ 7; RJN, Exhibit 8. That motion alleged that Defendants had violated the TRO and the Preliminary Injunction by dispersing assets, withdrawing funds in excess of their allowance and failing to provide the agreed upon records and accounting, among other things. RJN, Exhibit 8. On March 20, 2017, Defendants filed an opposition to the motion for civil contempt and sanctions. SUF, ¶ 8; RJN, Exhibit 9.

On April 10, 2017, the District Court issued a ruling holding Defendants in contempt and awarded Plaintiff sanctions for its costs and attorney's fees incurred in issuing subpoenas to third party banks to obtain the records the Defendants had been ordered to turn over, for investigating the disbursement of Defendants' assets and for prosecuting the motion for civil contempt (the "Contempt Ruling"). SUF, ¶ 9; RJN, Exhibit 10. The District Court ordered that Defendants were jointly and severally liable for a \$21,784.34 sanction (the "Sanctions Order"). RJN, Exhibit 11.

***B. The District Court's Findings in the Trademark Ruling***

The Trademark Ruling stated, in relevant part:

To prevail on a claim for trademark infringement under the Lanham Act, a plaintiff must prove (1) ownership of a valid trademark; (2) use of the mark without its consent; and (3) such use is likely to cause confusion....Counterfeiting is a more specialized case of trademark infringement because a counterfeit "is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark." 15 U.S.C. § 1127; see also 4 McCarthy on Trademarks and Unfair Competition § 25:10 (4th ed.) ("[C]ounterfeiting is 'hard core' or 'first degree' trademark infringement and is the most blatant and egregious form of 'passing off.' As Judge Scheindlin put it, counterfeiting is an aggravated form of trademark infringement "that seeks to trick the consumer into believing he or she is getting the genuine article[.]"). In a case involving the willful use of a counterfeit mark, a plaintiff may elect statutory damages pursuant to 15 U.S.C. § 1117(c).

....

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Donnabelle Escarez Mortel**

**Chapter 7**

In accordance with the foregoing, the Court finds that UL has presented undisputed evidence showing that defendants used a "spurious mark which is identical to or substantially indistinguishable from" the UL [trade]Marks "in connection with the sale, offering for sale, distribution, or advertising of any goods or services." 15 U.S.C. §§ 1114; 1127. Accordingly, a rational trier of fact could not find for defendants on UL's claims for trademark infringement and counterfeiting of a registered mark.

....

"[I]f the court finds that the use of the counterfeit mark was willful," the plaintiff may recover statutory damages in an amount not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c)(2).

RJN, Exhibit 5, pp. 10, 17.

The parties each presented arguments regarding the willfulness of Defendants' infringement. Plaintiffs argued that the use of counterfeit marks was willful because Defendants never sought permission to use the marks, despite multiple notifications from Plaintiff of their violation. Defendants argued that they did not receive Plaintiff's cease and desist letters that were sent by mail, that Space Chariot was complying with relevant safety regulations when it used Plaintiff's mark and that Defendants were entitled to use the mark when its supplier received a certification from Plaintiff. RJN, Exhibit 5, p. 18.

The District Court found that Defendants' arguments and excuses were "unavailing" because the "record evidence show[ed] that [D]efendants knowingly used replica UL Marks before a UL certification for hoverboards became available" RJN, Exhibit 5, p. 18. In addition, "at a minimum [D]efendants knew that the hoverboards obtained from" their supplier prior to Plaintiff issuing a certification for hoverboards could not have been certified, but they advertised them as such. RJN, Exhibit 5, p. 19. Furthermore, it appeared that Defendants had received an email cease and desist notification from Plaintiff. RJN, Exhibit 5, p. 18.

Based on the foregoing, the District Court concluded that there was "no dispute of material fact regarding [D]efendants' willful use of counterfeits of the UL marks. A

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 11, 2018

Hearing Room 301

2:30 PM

CONT... **Donnabelle Escarez Mortel**

**Chapter 7**

rational trier of fact could not find that [D]efendants' use of UL marks was not willful." RJN, Exhibit 5, p. 19. Accordingly, the Court awarded statutory damages in the amount of \$1,000,000 for Defendants' willful use of a counterfeit mark. RJN, Exhibit 5, p. 21.

***C. The Contempt Ruling***

In the Contempt Ruling, the District Court stated, in relevant part:

"[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt." *California Dep't of Soc. Servs. v. Leavitt*, 523 F.3d 1025, 1033 (9th Cir 2008) (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)). A party requesting an adjudication of civil contempt must establish "by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992). "The burden then shifts to the contemnors to demonstrate why they were unable to comply." *Id.*... [A] respondent may avoid being found in contempt by demonstrating that their failure to comply with a court order was "based on a good faith and reasonable interpretation of the order." *Id.* Additionally, "contempt is appropriate only when a party fails to comply with a court order that is both specific and definite." *Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 465 (9th Cir. 1989).

....

The Court finds defendants in contempt of the TRO and the Preliminary Injunction. In light of the character and magnitude of defendants' violations of the TRO and Preliminary Injunction and the necessity of deterring defendants' conduct in violation of the Court's orders, the Court GRANTS UL's request...

RJN, Exhibit 10, p. 2, 6.

***D. Debtor's Bankruptcy Case and this Adversary Proceeding***

On April 18, 2017, Debtor filed a voluntary chapter 7 bankruptcy petition [case no. 1:17-bk-11026]. On July 20, 2017, Plaintiff filed an adversary complaint against Debtor requesting nondischargeability of the Judgment pursuant to 11 U.S.C. § 523(a)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

(6).

On December 8, 2018, Plaintiff filed a motion for summary judgment (the "Motion") [doc. 14]. With the Motion, Plaintiff also filed the RJN [doc. 15] and the SUF [doc. 16]. Plaintiffs argue that they are entitled to summary judgment on their §523(a)(6) claim based on issue preclusion under the Trademark Ruling and the Judgment, as well as the Contempt Ruling. In the alternative, partial summary judgment should be awarded on either the Judgment or the Contempt Ruling individually.

On March 20, 2018, Debtor filed an opposition to the Motion (the "Opposition") which attached a declaration (the "Walker Declaration") by Walker and a declaration by Debtor (the "Debtor Declaration") [doc. 23]. Debtor also filed a statement of disputed material issues of fact and conclusions of law in support of the Opposition ("Debtor's Statement of Facts") [doc. 24]. In the Opposition, Debtor argues that she was not the officer, director or owner of Space Chariot and was not involved in the operations of the company and that she did not engage in conduct that was willfully designed to inflict injury on Plaintiff. Debtor further argues that she had no subjective knowledge that harm was substantially certain to occur.

On March 28, 2018, Plaintiff filed a reply to the Opposition (the "Reply") [doc. 25] and a reply to Debtor's Statement of Facts (the "Reply to Debtor's Facts") [doc. 26]. In the Reply, Plaintiff argues that the Motion seeks summary judgment under the principals of issue preclusion, and Debtor's additional facts are not relevant because she cannot dispute issues which were already litigated in the District Court (*e.g.*, her liability for trademark violation).

## **II. DISCUSSION**

### **A. *Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

(1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247–48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

Here, there are no genuine issues as to any material facts regarding the District Court Action As discussed below, Plaintiffs are entitled to summary judgment under 11 U.S.C. § 523(a)(6).

**B. Burden of Proof**

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523 (a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371 (1970)).

**C. Issue Preclusion**

The preclusive effect of a prior federal court judgment is determined under federal law. *In re Daily*, 47 F.3d 365, 368 (9th Cir.1995). The elements of federal issue preclusion are:

- (1) there was a full and fair opportunity to litigate the issue in the previous proceeding;
- (2) the issue was actually litigated and decided in the previous proceeding;
- (3) the issue was lost as a result of a final judgment in that action; and
- (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action.

*Pena v. Gardner*, 976 F.2d 469, 472 (9th Cir. 1992), as amended (Oct. 9, 1992).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 11, 2018

Hearing Room 301

2:30 PM

CONT... **Donnabelle Escarez Mortel**

Chapter 7

**D. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." A tort judgment against a debtor does not necessarily establish the "willful and malicious injury" elements unless the underlying tort required findings of both "willful" and "malicious" conduct by a debtor. *See In re Busch*, 311 B.R. at 657, 668-669 (Bankr. N.D.N.Y. 2004); *In re Pekar*, 260 F.3d 1035, 1037-1038 (9th Cir. 2001); *In re Plyam*, 530 BR 456, 469-470 (9th Cir. BAP 2015).

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145-46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") has held that "intentional infringement [of a trademark] is tantamount to intentional injury under [§ 523(a)(6)]." *In re Smith*, No. ADV.01-02219-A, 2009 WL 7809005, at \*9 (B.A.P. 9th Cir. Dec. 17, 2009), *aff'd*, 465 F. App'x 707 (9th Cir. 2012). In *Smith*, the BAP found that the bankruptcy court had properly applied issue preclusion to the issue of willfulness under § 523(a)(6) where the underlying district court made findings that the debtor intentionally infringed on a trademark. The Ninth Circuit Court of Appeals has also upheld the decision of a bankruptcy court to apply issue preclusion regarding willfulness under § 523(a)(6) based on a district court judgment finding a debtor liable for counterfeiting. *In re Yu*, 545 B.R. 633, 645 (Bankr. C.D. Cal. 2016), *aff'd* sub nom. *In re Chunchai Yu*, No. 6:15-AP-01153-SC, 2016 WL 4261655 (B.A.P. 9th Cir. Aug. 11, 2016), *aff'd*, 694 F. App'x 542 (9th Cir. 2017).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

(3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997). In addition, "[m]alice can be inferred based on the nature of the wrongful act." *In re Ormsby*, 591 F.3d 1199, 1207 (9th Cir. 2010).

In *Yu*, the bankruptcy court applied collateral estoppel on the issue of malice. The district court there had made specific findings that the debtor had engaged in importing equipment she knew was counterfeit, and that the debtor's conduct had necessarily caused injury because "the act of trademark infringement itself is a 'categorically harmful activity.'" *Yu*, 545 B.R. at 645, citing *Smith*, 2009 WL 7809005, at \*10. In addition, The *Yu* court found that debtor had no just cause or excuse because the district court specifically found that the debtor's trademark infringement was intentional, and the debtor could not collaterally attack the substantive findings in the district court's judgment.

***E. Issue Preclusion Applies to the Judgment***

***1. A Full and Fair Opportunity to Litigate the Issue in the Previous Action***

In her opposition, Debtor argues that she was not properly represented in the District Court Action, because she was jointly represented with Space Chariot and Walker. However, competent representation is not a requirement of issue preclusion. *Yu*, 545 B.R. at 640. Debtor was not only represented by counsel in the District Court Action, but multiple pleadings were filed on her behalf, including an answer to the complaint, an opposition to Plaintiff's motion for summary judgment, and an opposition to Plaintiff's motion for sanctions. RJN, Exhibit 2, 4, 9. The fact that Debtor was jointly represented does not mean that her representation was inadequate. Debtor's argument is inapposite, and this element is satisfied.

***2. The Issue was Actually Litigated in the Previous Action***

An issue is "actually litigated" where it is "raised by the pleadings or otherwise placed in issue." *In re Birnbaum*, 513 B.R. 788, 801 (Bankr. E.D.N.Y. 2014). As discussed above, other bankruptcy courts have granted summary judgment in adversary proceedings precluding willful trademark infringers and counterfeiters from re-litigating Lanham Act claims. *See e.g. Yu*, 545 B.R. at 639, *In re Mucci*, 458 B.R. 802

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**  
(Bankr. D. Conn. 2011).

**Chapter 7**

In order to reach its conclusion regarding statutory damages for counterfeiting, the District Court was required to decide whether Debtor's conduct was willful. To make a finding of willfulness under the Lanham Act, the court had to find "evidence of knowing conduct" or "evidence that the defendant acted with an aura of indifference to plaintiff's rights." RJN, Exhibit 5, pp. 17-18. The District Court found that Debtor had met this standard because the record showed that Debtor "knowingly used" replicas of Plaintiff's trademark. RJN, Exhibit 5, p. 18. The District Court awarded statutory damages of \$1,000,000, which are only available where a party has willfully counterfeited another party's mark.

Here, as in *Smith* and *Yu*, the District Court specifically found that the Debtor engaged in "willful, deliberate and unjustifiable counterfeiting of Plaintiff's trademarks." SUF, ¶ 6, RJN, Exhibit 7, p. 2. That finding was essential to the damages award in the Trademark Ruling. Consequently, the issue of willfulness was actually litigated in the District Court Action.

The District Court found that Debtor knowingly used counterfeits of Plaintiff's marks. As in *Yu*, such a finding sufficiently establishes that there was a wrongful act which was done intentionally for a finding of malice under § 523(a)(6). Because trademark infringement is a "categorically harmful activity," Debtor's infringement necessarily caused injury to Plaintiff. Defendants offered a number of excuses for their actions which the District Court found "unavailing." RJN, Exhibit 5, p. 19. Indeed, the District Court stated that the actions taken by Defendants were "unjustifiable." RJN Exhibit 7, p. 2. The District Court findings establish that Debtor's conduct was malicious.

**3. *The Issue was Lost as a Result of a Final Judgment on the Merits***

Here, the Judgment is final because it was entered on October 20, 2017. Pursuant to Rules 3 and 4, a party has 30 days to appeal a judgment. The time to appeal the Judgment has passed and there are no appeals pending. The Judgment also was on the merits, as evidenced by the Trademark Ruling, which includes detailed findings about why Debtor is liable on the various causes of action asserted in District Court. This element is satisfied.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

*4. The Person Against Whom Collateral Estoppel is Asserted was a Party in the Previous Action*

Debtor was one of the Defendants in the District Court Action. The findings in the Judgment specifically included her. As such, this element also is satisfied.

***F. Issue Preclusion Applies to the Sanctions Order***

A debt for contempt sanctions may be nondischargeable under § 523(a)(6) "when the conduct leading to the contempt was both willful and malicious." *In re Suarez*, 400 B.R. 732, 738 (B.A.P. 9th Cir. 2009), *aff'd*, 529 F. App'x 832 (9th Cir. 2013). In *Suarez*, the BAP upheld a bankruptcy court's ruling that a debtor's conduct leading to contempt was willful where she violated an order enjoining her from contacting or harassing her ex-husband's new wife. The debtor's conduct was aimed at the new wife and substantially certain to result in injury. In addition, the fact that the debtor had intentionally violated the order established that her conduct was wrongful, done without just cause or excuse for purposes of establishing malice. *Id.* Furthermore, the conduct caused "injury" in the form of attorney's fees and costs to enforce the order. *Id.*

As in *Suarez*, the Contempt Ruling establishes that Debtor's conduct was willful. The conduct discussed in the Contempt Ruling constituted affirmative acts in direct violation of the District Court's orders. Exhibit 10, pp. 4-5.

Similarly, the Contempt Ruling establishes malice. The affirmative violations of the District Court's orders, including dispersing assets and failing to abide by the asset freeze, were wrongful acts which could not possibly have been unintentional. The District Court found that the excuses offered by Defendants (that they used funds obtained from violation of the Preliminary Injunction and TRO to fund their defense) were insufficient to absolve them of liability for their contemptuous conduct. RJN, Exhibit 10, pp. 5-6. In addition, as in *Suarez*, Plaintiff was forced to incur attorney's fees and costs to enforce the orders.

In light of the foregoing, the issues of the willfulness and maliciousness of Debtor's conduct were actually litigated in the District Court Action. For the same reasons as discussed above with regard to the judgment, the other elements of issue preclusion

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

are met here. The Contempt Ruling has not been appealed, and Debtor was represented by counsel in the previous action.

**III. CONCLUSION**

Based on the foregoing, the Court will grant the Motion.

Movant must submit the order within seven (7) days.

**ENDNOTES**

1. Debtor filed a separate statement of disputed issues of material fact [doc. 24]. However, that statement admits the vast majority of Plaintiff's statements, and adds what Debtor appears to believe are clarifying statements. To the extent that these assertions are offered to defeat Plaintiff's statements of fact, they fail to satisfy Debtor's burden to show a genuine issue of material fact. This memorandum treats statements of fact as undisputed where Plaintiff has met its burden and Debtor has offered no evidence showing there is a genuine issue for trial.
2. In her response to the SUF, Debtor states that this fact is "disputed." However, Debtor offers no facts or evidence in rebuttal, and merely adds the additional information that "the case was brought against Kevin and the Space Chariot, Inc." Furthermore, Debtor states: "[i]t is undisputed that [Defendant] was named in the lawsuit." Doc. 24, p. 2. Debtor has failed to satisfy her burden to show a genuine issue of material fact, especially in light of the District Court Complaint attached as Exhibit 1 to the RJN.
3. The complaint in the District Court Action also alleged that prior to Plaintiff's issuance of a safety standard for hoverboards, there were numerous reports about hoverboards self-combusting and catching fire. Plaintiff stated that many companies, including Space Chariot, responded to the negative press by falsely claiming that their hoverboards were certified by Plaintiff. RJN, Exhibit 1, ¶¶ 35-39.

**Party Information**

**Debtor(s):**

Donnabelle Escarez Mortel

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 11, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Donnabelle Escarez Mortel**

**Chapter 7**

Jeffrey J Hagen

**Defendant(s):**

Donnabelle Escarez Mortel

Represented By  
Stella A Havkin

**Plaintiff(s):**

UL LLC

Represented By  
Howard Steinberg

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 11, 2018

Hearing Room 301

2:30 PM

1:17-12592 Tiffany Alexandra Fox  
Adv#: 1:18-01001 Stokes v. Fox

Chapter 7

#18.00 Plaintiff's motion for leave to file first amended complaint  
for objection to discharge

Docket 16

\*\*\* VACATED \*\*\* REASON: Orders entered on 4/10/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Tiffany Alexandra Fox

Represented By  
Christine A Kingston

**Defendant(s):**

Tiffany A. Fox

Represented By  
Christine A Kingston

**Plaintiff(s):**

Gavin H Stokes

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**1:14-10104 Ana Aracely Quijano**

**Chapter 7**

**#1.00** Trustee's final report and applications for compensation

Amy Goldman - Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith - Attorney for Ch 7 Trustee

Samuel R. Biggs, CPA - Accountants for Ch 7 Trustee

Docket 61

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee – approve fees of \$2,750.00 and reimbursement of expenses of \$27.80.

Lewis Brisbois Bisgaard & Smith LLP (“Lewis Brisbois”), counsel to chapter 7 trustee – approve fees of \$8,696.50 and reimbursement of expenses of \$86.04. The Court does not approve \$2,281.50 in fees for the reasons below.

SLBiggs, A Division of SingerLewak (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$2,469.00 and reimbursement of expenses of \$149.79. The Court does not approve \$663.00 in fees for the reasons below.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Ana Aracely Quijano**

**Chapter 7**

of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

In light of the foregoing, the Court will not approve the following fees because they appear to be excessive:

*SLBiggs*

- The Court will approve 1.5 hours for Lisa Nuzzi for preparation of the fee application (reduction of 1.3 hours at \$210 / hour).
- The Court will approve 8 hours for Kathi Cervi for tax preparation (reduction of 2 hours at \$195 / hour).

*Lewis Brisbois*

- The narrative of services provided states that 4.5 hours were billed in preparing the fee application, for a total of \$990.00 fees. However, the billing records attached to the application show 9.8 hours billed for preparing the fee application, for a total of \$2,156 in fees. The Court will approve 4 hours for preparing the fee application.
- On May 22, 2017, there is an entry for "Begin preparation of asset Purchase Agreement re: membership interest," which billed 1.8 hours, for a total of \$396.00 in fees. This entry does not appear to apply to the pending case, which concerned the settlement of a wrongful termination claim against the debtor's former employer. The Court will not approve these fees.
- Between March 13, 2017 and April 11, 2017, there are multiple, almost daily entries for email communications to various parties regarding the settlement agreement, in some cases multiple emails on a single day. In addition, on April 3, 2017, an entry on an email regarding the settlement agreement appears to have been miscategorized under "Asset Disposition" instead of under "Asset Analysis and Disposition." The Court will reduce such fees by 50% (reduction

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**     **Ana Aracely Quijano**  
of 1.1 hours at \$220 / hour).

**Chapter 7**

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Description	Time	Fee
Fee/Employment Applications	3/16/17	Review and revise order of employment	0.50	\$110.00
Case Administration	4/27/17	Review and analyze claims filed in the Bankruptcy case	0.50	\$110.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Ana Aracely Quijano**

**Chapter 7**

Claims Administration & Objections	9/8/17	Review proofs of claim filed in the case	0.50	\$110.00
Claims Administration Objections	5/19/16	Review filed proof of claim from So Cal Gas Company; deposit applied	0.10	\$37.50

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Ana Aracely Quijano

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Lovee D Sarenas  
Annie Verdries

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**1:15-13788 Kode Lifestyle Group LLC**

**Chapter 7**

**#2.00** Trustee's final report and applications for compensation

Nancy Zamora - Chapter 7 Trustee

Larry Simons - Attorney for Ch 7 Trustee

Samuel R. Biggs, CPA - Ch 7 Trustee

Docket 41

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$3,500.00 and reimbursement of expenses of \$602.61.

Law Offices of Larry D. Simons, counsel to chapter 7 trustee – approve fees of \$5,500.00 and reimbursement of expenses of \$608.55.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve fees of \$1,388.37 and reimbursement of expenses of \$111.63.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Kode Lifestyle Group LLC

Represented By  
Howard Camhi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Kode Lifestyle Group LLC**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Larry D Simons  
Frank X Ruggier

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11919 Delia Z Figueroa**

**Chapter 7**

**#3.00** Trustee's final report and applications for compensation

Nancy Zamora - Chapter 7 Trustee

Grobstein Teeple, LLP - Accountants for Ch 7 Trustee

Docket 34

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$3,250.00 and reimbursement of expenses of \$383.23.

Grobstein Teeple, LLP (“Grobstein”), accountant to chapter 7 trustee – approve fees of \$1,360.00 and reimbursement of expenses of \$93.49. The Court will not approve \$120.00 in fees for the reasons below.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) (“Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.”).

In accordance with the foregoing, the Court does not approve the fees billed by



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Delia Z Figueroa**

**Chapter 7**

Grobstein for the services identified below:

<b>Date</b>	<b>Timekeeper</b>	<b>Description</b>	<b>Time</b>	<b>Fee</b>
12/4/17	DD	Compiled exhibits and proof of service for employment application and notice to employ.	0.50	\$50.00
12/4/17	DD	Filed the Employment Application and Notice to Employ.	0.30	\$30.00
12/4/17	DD	Proof of service	0.20	\$20.00
12/26/17	DD	Filed the Declaration of Non-Opposition on PACER and lodged the Order	0.20	\$20.00

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Delia Z Figueroa

Represented By  
Bernal P Ojeda

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:11-10426 Georges Marciano**

**Chapter 11**

**#4.00** Post confirmation status conference

fr. 10/24/13; 3/13/14; 7/10/14; 1/8/15; 1/22/15; 4/23/15;  
10/22/15; 3/17/16; 9/15/16; 3/16/17; 9/14/17; 3/15/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: The order closing this case was entered on  
3/20/18 [doc. 3017].**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Georges Marciano

Represented By  
Michael E Reznick  
Michael C Heinrichs  
Jeremy V Richards  
Jonathan J Kim  
Robert Mockler  
Bernard R Given

Beverly Hills Antiques, Inc.

Represented By  
Jeremy V Richards  
Jeffrey L Kandel  
Jonathan J Kim

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders  
Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Georges Marciano**

**Chapter 11**

Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
Pachulski Stang Ziehl & Jones LLP  
George T Caplan  
Robert M Saunders  
Blake, Cassels & Graydon LLP  
Linda F Cantor ESQ  
Jeffrey L Kandel  
Harry D. Hochman  
Victoria Newmark  
Jonathan J Kim  
Bernard Boucher  
James KT Hunter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:13-17502 Glenroy E Day, Jr.**

**Chapter 11**

**#5.00** Status conference in re-opened chapter 11 case  
pursuant to 11 U.S.C. sec 105(D)

Docket 0

**Tentative Ruling:**

Unless an appearance is made at the status conference, the Court will continue the hearing to **May 10, 2018 at 2:00 p.m.** to coincide with the hearing on the *Motion for Order Determining Value of Collateral* [doc. 243].

Appearances on April 12, 2018 are excused.

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

**Debtor(s):**

Glenroy E Day Jr.

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#6.00** Motion for order to show cause why: (1) Debtor Ginkgo Rose Ltd. and its majority owners Barbara and David Darwish should not be held in contempt of the September 10, 2014 order to produce documents in connection with their 2004 examinations; and (2) Third party Ruth Zakowski should not be held in contempt of the order dated December 22, 2014 to appear for 2004 exam and produce documents

fr; 2/19/15; 2/25/15; 3/19/15; 4/23/15; 7/23/15; 1/21/16; 5/5/16; 1/12/17; 7/13/17; 10/19/17

Docket 214

**Tentative Ruling:**

The Court will continue this hearing to **1:00 p.m. on October 10, 2018.**

Appearances are excused on April 12, 2018.

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

**Debtor(s):**

Ginkgo Rose Ltd.

Represented By  
Alan W Forsley  
Marc A Lieberman  
Stephen E Ensberg Esq

**Movant(s):**

Ernest Johnson

Represented By  
Dennis P Riley

Carlos Rodriguez

Represented By  
Dennis P Riley

Dennis Goldson

Represented By  
Dennis P Riley

Wayne Hart

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT...**

**Gingko Rose Ltd.**

**Chapter 11**

Dennis P Riley

Esmeralda Hernandez

Represented By  
Dennis P Riley

Jack Vaughn

Represented By  
Dennis P Riley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

fr. 9/11/14; 12/4/14; 12/11/14; 12/23/14; 3/5/15; 3/19/15;  
4/23/15; 7/23/15; 1/21/16; 5/5/16; 1/12/17; 7/13/17; 10/19/17

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on October 10, 2018.**

The debtor in possession or any appointed chapter 11 trustee must file an updated status report, to be served on the debtor's 20 largest unsecured creditors and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

Appearances are excused on April 12, 2018.

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Alan W Forsley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#8.00** U.S. Trustee motion under 11 U.S.C. § 1112(b) to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 186

**\*\*\* VACATED \*\*\* REASON: Notice of Withdrawal filed on 4/10/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A Stubbe



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:14-15621 Edward D. Roane**

**Chapter 11**

**#9.00** U.S. Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 193

**\*\*\* VACATED \*\*\* REASON: withdrawal filed on 3/30/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Edward D. Roane

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:15-13753 Alexander Benavides and Maria Enriqueta Benavides**

**Chapter 11**

**#10.00** Post-confirmation status conference re chapter 11 case

fr. 1/14/16; 4/14/16; 6/2/16; 8/4/16; 9/22/16; 1/26/17;  
2/16/17; 6/15/17; 10/19/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Case closed 2/16/2018**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alexander Benavides

Represented By  
Anthony Obahi Egbase

**Joint Debtor(s):**

Maria Enriqueta Benavides

Represented By  
Anthony Obahi Egbase

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#11.00** Confirmation hearing re debtor's chapter 11 plan of reorganization

Docket 214

**Tentative Ruling:**

Confirm *Individual Debtor's Chapter 11 Plan of Reorganization* [doc. 214]. No later than **July 29, 2018**, the reorganized debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States Trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **August 9, 2018 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the debtor is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the debtor will be so notified.

**Party Information**

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#12.00** Status conference re chapter 11 case

fr. 3/3/16; 9/15/16; 11/10/16; 2/16/17; 4/20/17; 7/13/17;  
10/5/17; 12/21/17; 2/14/18

Docket 1

**Tentative Ruling:**

See calendar no. 12.

**Party Information**

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#13.00** Disclosure statement describing chapter 11 plan of reorganization

fr. 3/8/18

Docket 101

**Tentative Ruling:**

Pursuant to 11 U.S.C. § 1125, the Court will approve the "Debtors' Disclosure Statement Describing Chapter 11 Plan of Reorganization" for purposes of soliciting acceptances and rejections of the debtors' proposed chapter 11 plan.

**Proposed dates and deadlines regarding "Debtors' Chapter 11 Plan of Reorganization" (the "Plan"):**

Hearing on confirmation of the Plan: **June 14, 2018 at 1:00 p.m.**

Deadline for the debtors to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtors: **April 27, 2018.**

The debtors must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **May 25, 2018.**

Deadline for the debtors to file and serve the debtors' brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **June 5, 2018.** Among other things, the debtors' brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**Party Information**

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#14.00** Status conference re chapter 11 case

fr. 6/8/17, 10/5/17; 10/19/17 (stip); 11/16/17(stip); 12/14/17;  
1/11/18

Docket 1

**Tentative Ruling:**

See calendar no. 13.

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#14.10** Disclosure statement hearing in support of plan of reorganization

fr. 2/8/18; 3/29/18

Docket 79

**Tentative Ruling:**

Contrary to this Court's instructions at the prior hearing regarding approval of the debtor's proposed disclosure statement, the debtor did not file a red-line version of an amended disclosure statement by April 6, 2018. On April 9, 2018, the debtor's counsel filed a declaration requesting that this hearing be continued for sixty days to allow the debtor time to file his 2017 tax returns prior to doing so.

The Court will continue the hearing regarding the adequacy of the debtor's disclosure statement to **June 14, 2018 at 1:00 p.m.** No later than May 31, 2018, the debtor must file a redline of the amended disclosure statement.

Appearances on April 12, 2018 are excused.

**3/29/18 Tentative:**

Ikechukwu Mgbeke ("Debtor") should be prepared to address the following:

The most recent Monthly Operating Report ("MOR"), for February 2018, reflects an ending balance of \$61.26 in Debtor's general debtor in possession account and an ending balance of \$9,686.30 in Debtor's rental account. In Part 3.A. of the proposed disclosure statement, Debtor projects having \$21,130.04 in available cash as of the effective date. However, under the feasibility analysis in part 5, Debtor projects having \$20,930.04 in cash as of the effective date. As such, there is a discrepancy of \$200 within the disclosure statement.

Both projected amounts are more than the current cash on hand, which totals \$9,747.56. In Part 5, Debtor indicates that he needs a total of \$17,177.26 to cover effective date payments. These payments include \$15,000 to AOE Law Associates and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Ikechukwu Mgbeke**

**Chapter 11**

\$2,177.26 in other plan payments. In December 2017, Debtor's MOR reflected \$17,011.30 cash on hand, but in February 2018, Debtor paid AOE Law associates \$12,000 pursuant to their approved fee application [doc. 98, p. 5]. Presumably, Debtor no longer will need to pay that \$12,000 to AOE on the effective date. If this is the case, then it appears he will have enough cash on hand to cover his effective date expenses (\$17,177.26 - \$12,000= \$5,177.26). Debtor must update his disclosure statement accordingly.

Part 3 D of the disclosure statement states that Debtor planned to increase his tenant's rent to \$3,000 as of February 2018 (an increase of \$500), but the February 2018 MOR does not reflect any such increase. The \$6,000 would be enough to cover plan payments *if* Debtor's expenses are identical to the expenses listed in the Declaration of Current/Postpetition Income & Expenses (Exh. A to the disclosure statement) every single month (which includes plan payments). However, Debtor has not shown that he will actually receive his projected \$500/month increase in rental income to cover his monthly expenses.

Debtor's latest MOR reflects expenses in the amount of \$2,982.11, not including the monthly \$2,652.93 in payments to secured lender. This totals \$5,635.04, which is very close to D's projected expenses of \$5,644.23. In January 2018, D's expenses totaled \$2,981.07, which coupled with the payments to the secured lender would total \$5,634. As it stands, if Debtor strays even a penny beyond the projected expenses in the Declaration of Current/Postpetition Income & Expenses, Debtor will be unable to make plan payments.

Moreover, it appears that Debtor's disclosure statement does not taken into account his payment of postpetition income tax. Given Debtor's tight budget, it is unclear how Debtor will be able to pay his income tax liabilities.

**Party Information**

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Ikechukwu Mgbeke**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#15.00** Status conference re chapter 11 case

fr. 11/9/17; 11/16/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Case converted to ch 7 on 2/21/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#16.00** Status conference re chapter 11 case

fr. 12/7/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10287 Gary Stephen Gelzer**

**Chapter 11**

**#17.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The Court will continue this matter to **May 10, 2018 at 1:00 p.m.**

On March 29, 2018, the debtor filed a *Status Conference Report of Chapter 11 Case* (the "Status Report") [doc. 44]. Contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 38], the Status Report is not supported by evidence in the form of declarations and supporting documents. In addition, the debtor did not serve the Status Report on My Lucky Bamboo, Inc. or Dave Czehut, who are creditors on the *List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* [doc. 20].

**No later than April 19, 2018**, the debtor must serve notice of the continued status conference on all required parties. **No later than April 26, 2018**, the debtor must file evidence, i.e., declarations and supporting documents, in support of the debtor's status report.

Appearances on April 12, 2018 are excused.

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

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#17.10** Status conference re: chapter 11 case

from: 3/29/18

Docket 1

**Tentative Ruling:**

If the debtor elects to file a transcript of her tax return with the Court pursuant to 11 U.S.C. § 521(f), in lieu of filing the actual return, the debtor may find information about transcripts and request a transcript from the Internal Revenue Service's website, located at <https://www.irs.gov/individuals/get-transcript>.

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **June 15, 2018.**

Deadline to mail notice of Bar Date: **April 16, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **October 31, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on November 15, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#18.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on May 10, 2018.**

Appearances on April 12, 2018 are excused.

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

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 12, 2018

Hearing Room 301

2:00 PM

1:14-13456 **Gingko Rose Ltd.**

**Chapter 11**

**#19.00** Application by debtor and debtor in possession to employ James J. Little and Trial Advocacy Group, LLC as special litigation counsel and approval of hourly fee

fr. 1/18/18; 2/15/18; 3/12/18

Docket 428

**Tentative Ruling:**

The Court previously continued the hearing regarding the debtor's application to employ James J. Little and Trial Advocacy Group, LLC ("TAG") as special litigation counsel, filed on December 18, 2017 [doc. 428] (the "Little Employment Application"). As a result of Mr. Little's death, it appears that the debtor is no longer seeking to employ Mr. Little and TAG with regard to any services provided to the debtor's estate before Mr. Little's death. Consequently, the Court will deny the Little Employment Application for failure to prosecute.

The Court will prepare the order denying the Little Employment Application.

**1/18/2018 Tentative:**

The applicant has not provided sufficient information regarding whether the debtor's principals and/or affiliates, who/which applicant also represents ("Mr. Little and TAG are representing the Debtor and affiliated companies in various state court litigation matters in which the Debtor is involved . . .") [Application, at p. 3, para. 5], will seek to pay their liability using the debtor's assets. The applicant must furnish additional information regarding this possibility, such as whether there exists an indemnity, guaranty or other similar agreement between the debtor and its principals/affiliates.

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Gingko Rose Ltd.**

James J Little

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 12, 2018

Hearing Room 301

2:00 PM

1:14-13456 **Gingko Rose Ltd.**

**Chapter 11**

#19.10 Application by debtor to employ Philip H. Stillman as special litigation counsel and approval of hourly fee

Docket 442

**Tentative Ruling:**

Deny. The debtor has not sufficiently described the intended scope of the employment of proposed special litigation counsel and sufficiently disclosed that counsel's apparently simultaneous representation of insiders of the debtor, some of which/whom, among other things, apparently contend that they are creditors of the debtor or are entitled to liens against property of the estate.

For example, why is proposed "special litigation" counsel prosecuting the debtor's motion for authority to incur secured debt? *See* doc. 452. With respect to that motion, is proposed special litigation counsel simultaneously representing the debtor and Foirs, Inc.? If not, with respect to that motion, which other attorney is representing Foirs, Inc.?

Consequently, the Court cannot conclude that proposed special litigation counsel does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter(s) on which such attorney is to be employed.

The respondents must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little  
Philip H Stillman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#20.00 Debtor's motion for authority to incur secured debt**

fr. 1/18/18; 2/15/18; 3/15/18

Docket 440

**Tentative Ruling:**

**1/18/2018 Tentative:**

Deny.

**I. BACKGROUND**

On July 18, 2014, Gingko Rose Ltd. ("Debtor") filed a voluntary chapter 11 petition.

On March 19, 2015, the Court entered an order suspending this chapter 11 case (the "Stay Order") [doc. 255]. In the Stay Order, the Court stated that this case "is suspended until completion of the State Court Malicious Prosecution Case... or until further order of the court (the 'Interim Period') pursuant to 11 U.S.C. § 305(a)...." The Stay Order provided that Debtor must comply with the provisions of 11 U.S.C. § 364.

On December 18, 2017, Debtor filed a motion to incur postpetition secured debt (the "Motion") [doc. 429] and the Declaration of David Darwish (the "Darwish Declaration") [doc. 430]. In the Motion, Debtor requests authority to execute a promissory note and deeds of trust in favor of Foirs, Inc. ("Foirs") in the amount of \$3,321,781.05, which Debtor asserts is the amount Foirs paid to satisfy a judgment against Debtor.

In the Darwish Declaration, Mr. Darwish, a principal of Debtor, provides that Foirs is owned by his son and daughter. Darwish Declaration, ¶¶ 1-2. Mr. Darwish also attached several deeds of trust in favor of Foirs, dated December 1, 2017. Darwish Declaration, Exhibit B. Debtor has not provided a promissory note between Debtor and Foirs.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Gingko Rose Ltd.**

**Chapter 11**

On January 3, 2018, judgment creditors Jack Vaughn, Esmeralda Hernandez, Wayne Hart, Carlos Rodriguez and Ernest Johnson ("Judgment Creditors") filed an opposition to the Motion (the "Opposition") [doc. 434]. Judgment Creditors assert that Debtor cannot seek authorization by the Court to enter into a postpetition financing agreement *after* entering into that agreement. On January 12, 2018, Debtor filed a reply to the Opposition (the "Reply") [doc. 437]. In the Reply, Debtor states that the promissory note between Foirs and Debtor includes a provision that states that authorization by the Court is a condition precedent to executing the promissory note and that Foirs is entitled to equitable subrogation of its alleged lien.

## **II. ANALYSIS**

Under Federal Rule of Bankruptcy Procedure ("FRBP") 4001(c)(1)(A), "[a] motion for authority to obtain credit... shall be accompanied by a copy of the credit agreement and a proposed form of order." Debtor has not provided the Court with a copy of the promissory note between Debtor and Foirs. Under FRBP 4001(c)(1)(B), a motion must include "all material provisions of the proposed credit agreement" as well as "describe the nature and extent of each provision" provided in FRBP 4001(c)(1)(B). Debtor has also not provided this information, and, as a result, the Motion is procedurally improper. Nevertheless, the Court will address the merits below.

### ***A. Postpetition Financing under 11 U.S.C. § 364(c)***

Pursuant to 11 U.S.C. § 364(c)—

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Gingko Rose Ltd.**

**Chapter 11**

Pursuant to 11 U.S.C. § 364(d)(1)—

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

Pursuant to 11 U.S.C. § 364(d)(2), "[i]n any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection." Courts have articulated a three-part test to determine whether a debtor is entitled to § 364(c) financing: (1) the trustee or the debtor is unable to obtain unsecured credit under § 364(b); (2) the credit transaction is necessary to preserve the assets of the estate; and (3) the terms of the transaction are fair, reasonable, and adequate given the circumstances of debtor and the proposed lender. *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

First, Debtor has not shown that it was unable to obtain unsecured credit. *See In re Photo Promotion Assocs., Inc.*, 89 B.R. 328, 333 (S.D.N.Y. 1988) ("Section 364(c), therefore, is unavailable unless a prospective creditor has refused to extend credit under section 364(a)."). In fact, it appears Foirs was willing to extend credit (by paying off the judgment) without first obtaining a security interest in Debtor's property. As such, this element not being satisfied, the Motion may be denied on this basis alone.

Next, Debtor has not shown that the transaction is necessary to preserve the assets of the estate. In fact, Foirs apparently already paid Judgment Creditors. Debtor has not stated that Foirs intends to take any action against the estate if the Court does not approve this transaction. Consequently, this element is also not satisfied.

Moreover, the Ninth Circuit Court of Appeals has "interpreted section 364(c)(2) as requiring a debtor to obtain the bankruptcy court's authorization *before* incurring secured debt." *In re Harbin*, 486 F.3d 510, 521 (9th Cir. 2007) (emphasis in *Harbin*).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 12, 2018

Hearing Room 301

2:00 PM

CONT... **Gingko Rose Ltd.**

Chapter 11

"[I]f the debtor fails to obtain prior authorization, the bankruptcy court may exercise its corrective power to rescind the transaction." *Id.* (citing *In re McConville*, 110 F.3d 47, 50 (9th Cir. 1997)). "[N]othing in the language of the Bankruptcy Code precludes the court from considering *nunc pro tunc* authorization of the refinancing as one possible remedy in response to the 'equities of the situation' before it." *Id.*, at 522.

Here, Debtor asserts that the promissory note includes a condition precedent that conditions the effectiveness of the promissory note and deeds of trust on the Court's approval of the postpetition financing. However, Debtor has not attached the promissory note. The deeds of trust attached to the Darwish Declaration include no such language. As such, the evidence before the Court suggests that Debtor encumbered property of the estate without *prior* approval of the Court. Consequently, the Court may rescind the transaction. *Harbin*, at 521. In light of the above, the Court will deny Debtor's request to incur postpetition secured debt.

***B. Equitable Subrogation***

"[S]ubrogation is the substitution of one party in place of another with reference to a lawful claim, demand or right. It is a derivative right, acquired by satisfaction of the loss or claim that a third party has against another.... [W]hen the doctrine of subrogation applies, the subrogee succeeds to the legal rights and claims of the subrogor with respect to the loss or claim." *In re Hamada*, 291 F.3d 645, 649 (9th Cir. 2002). In *Hamada*, the court referred to California law on subrogation, "which provides for equitable subrogation if the party seeking subrogation meets five specific criteria." *Id.*, at 651.

First, the claimant must have paid the debt owed to the lienholder in order to protect the claimant's own interest. Second, the claimant must not have acted as a volunteer. Third, the claimant could not have been primarily liable for the debt he paid. Fourth, the claimant must have paid the entire debt owed to the lienholder. And, fifth, the subrogation must not work an injustice to the rights of others.

*Id.* (quoting *Fidelity Nat. Title Ins. Co. v. U.S. Dept. of the Treasury, I.R.S.*, 907 F.2d 868, 870 (9th Cir. 1990)).

First, the doctrine of equitable subrogation is a separate issue from Debtor's authority

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Gingko Rose Ltd.**

**Chapter 11**

to incur postpetition debt. Debtor brings up equitable subrogation for the first time in the Reply, such that Judgment Creditors have not been given an opportunity to respond to this argument.

Nevertheless, equitable subrogation does not apply here. Nothing in the record demonstrates that Foirs paid the judgment to Judgment Creditors in order to protect Foirs' own interest or that the judgment was secured. Next, it is unclear if Foirs has paid the entire debt owed to Judgment Creditors, because Judgment Creditors are litigating appeals against Debtor, which Judgment Creditors assert may result in additional liability. Finally, it is unclear if Foirs acted as a volunteer. As a result, Debtor may not rely on equitable subrogation as a basis for the Court to grant Foirs any liens against property of the estate.

**IV. CONCLUSION**

The Court will deny the Motion.

Respondents must submit an order within seven (7) days.

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Marc A Lieberman  
Michael R Totaro  
James J Little



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, April 12, 2018

Hearing Room 301

2:00 PM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#21.00 Motion to Avoid Lien (Real Property)  
with ASD Specialty Healthcare, Inc. dba Oncology Supply

**Stip to continue filed 4/6/18**

Docket 99

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 4/9/18.  
Hearing continued to 5/17/18 at 2:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#22.00** Motion to withdraw as debtor's bankruptcy counsel

Docket 98

**Tentative Ruling:**

In light of the chapter 7 trustee's *Request to Dismiss Chapter 7 Debtor(s) for Failure to Appear at Section 341(a) Meeting of Creditors* [doc. 113], filed on April 9, 2018, the Court will grant the motion to withdraw as debtor's bankruptcy counsel.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Ruling from 3/8/18**

The Court will continue the hearing to **April 12, 2018 at 2:00 p.m.**

Pursuant to Local Bankruptcy Rule 9011-2(a), a corporation may not file a petition or otherwise appear without counsel in any case or proceeding. Consequently, the Court has concerns about the impact of granting the motion, as concerns the administration of this case.

On September 12, 2017, AAA Nursing Services Inc. (the "Debtor") filed a voluntary chapter 11 petition. On October 20, 2017, the United States Trustee filed a motion to dismiss or convert the Debtor's case pursuant to 11 U.S.C. § 1112(b) (the "Motion to Dismiss or Convert") [doc. 51]. On February 21, 2018, the Court entered an order granting the Motion to Dismiss or Convert and converting the Debtor's case to chapter 7 [doc. 105]. On February 21, 2018, David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee") [doc. 106].

On February 14, 2018, movant filed the pending motion to withdraw as counsel (the "Motion to Withdraw") [doc. 98]. In light of the subsequent conversion of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... AAA Nursing Services Inc.**

**Chapter 11**

Debtor's case to chapter 7, the Court will continue the hearing to allow movant to serve notice of the Motion to Withdraw, the continued hearing thereon, and the deadline to file any response thereto, on the Trustee.

Appearances on March 8, 2018 are excused.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

- #23.00** Chapter 11 trustee's motion for order:
- (1) Authorizing sale of estate's right, title and interest in real property free and clear of lien and interests of Eymac;
  - (2) Approving overbid procedure;
  - (3) Authorizing assumption and assignment of unexpired real property lease; and
  - (4) Approving payment of commissions

Docket 155

**Tentative Ruling:**

Grant, for the reasons set forth below.

**I. BACKGROUND**

On October 11, 2017, Mehri Akhlaghpour ("Debtor") filed a voluntary chapter 11 petition. On February 1, 2018, the Court issued an order directing the appointment of a chapter 11 trustee [doc. 101]. On February 6, 2018, Nancy J. Zamora was appointed the chapter 11 trustee (the "Trustee") [doc. 107].

On her schedule A/B, Debtor listed an ownership interest in a number of real properties. Among them was a property located at 5454 Zelzah Avenue, #302, Encino, CA 91316 (the "Zelzah Property"). In her schedule C, Debtor did not claim an exemption in the Zelzah Property [doc. 11, p. 16].

On February 7, 2018, the Trustee filed an application to employ Rodeo Realty, Inc (the "Broker") as a real estate broker [doc. 110]. On March 15, 2018, the Court entered its order approving the employment of the Broker [doc. 135]. On March 22, 2018, the Trustee filed a motion to sell the Zelzah Property free and clear of liens, subject to overbid, and to assume and assign the unexpired lease on the Zelzah Property (the "Motion") [doc. 155].

On March 29, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 163]. The Opposition includes a printout of a webpage from

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

“www.PropertyRadar.com” (the "Property Radar Estimate") estimating that the Zelzah Property had a value of \$335,700 as of September 6, 2017 (noting "68% confidence") [doc. 163, Exhibit 1]. The Opposition also includes a declaration by Rob Schultz, the CEO of Pacific Realty (the "Schultz Declaration") [doc. 163, Schultz Declaration, ¶ 2]. On March 29, 2018, the Trustee filed a reply to the Opposition (the "Reply") [doc. 164].

On March 6, 2018, the Trustee filed motions similar to the Motion regarding real properties located at 26943 Hillsborough Pkwy, Unit 27, Santa Clarita, California 91354 (the "Hillsborough Property") [doc. 145], and at 8338 Woodley Pl., Unit 28, North Hills, California 91343 (the "Woodley Property") [doc. 146]. On April 5, 2018, the Court issued a ruling granting both of those motions [doc. 165].

## **II. DISCUSSION**

### *A. General Sale Standard*

Pursuant to 11 U.S.C. § 363(b)(1), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" subject to an exception that does not apply here. A trustee has broad authority to negotiate sales of estate property under 11 U.S.C. § 363(b)(1); *see also In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). In reviewing motions to sell property under § 363(b), a court must determine whether sound business reasons support the sale outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

### *B. Good Business Reason Justifying Sale*

Debtor objects to the sale of the Zelzah Property on the grounds that the Motion proposes to sell substantially all of the estate assets and is not supported by a good business justification. Debtor references *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983). In *Lionel*, the Second Circuit Court of Appeals outlined six factors for determining whether a good business reason exists justifying a sale of substantially all of the assets of the debtor.

The Trustee correctly asserts that *Lionel* is distinguishable because the chapter 11 trustee in *Lionel* sought authority to sell substantially all of the estate's assets. Here,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

the Motion does not contemplate the sale of all or substantially all of the estate's property, because the estate owns three other properties not subject to the Motion. In addition, the estate owns a 100% interest in eight business entities [doc. 11, pp. 11-12]. Even accounting for the Trustee's prior-approved sales of the Hillsborough and Woodley Properties, the Motion will not result in the sale of substantially all of the estate property.

In addition, in *Lionel*, the chapter 11 trustee did not give any business justification for the sale, other than the appeasement of the committee of largest creditors. *Id.* at 1071. Here, the Trustee has articulated a number of reasons for the sale, including that continued operation of the Zelzah Property as a rental property is not tenable, and that the sale price is fair and reasonable.

Debtor also objects to the sale on the grounds that: (1) the sale is premature because the Zelzah Property is not a wasting asset; (2) there is no justifiable cause for selling the Zelzah Property because the real estate market in the Los Angeles area is improving; and (3) the sale price is inadequate.

Here, the Motion is not premature. Debtor filed her chapter 11 petition nearly six months ago. Given that the marketing of the Zelzah Property generated multiple inquiries and offers, it appears that the sale price reflects the market, and that the Zelzah Property has been marketed for enough time to generate competitive interest [doc. 164, Decl. of Behnaz Tavakoli, ¶¶ 3-6].

Furthermore, as the Trustee points out in the Reply, the Zelzah Property does not generate net rental income. Debtor asserts that the rental income for the property is \$1,550, and that its expenses consist of \$888.44 for mortgage payments, \$390 for HOA fees, and \$22 for insurance, for a total of \$1,300.44. This total does not include the annual tax bill for the Zelzah property, which amounts to approximately \$283 per month. Accounting for property taxes, the property is operating at a \$23 per month loss [doc. 164, Decl. of Nancy Zamora, ¶¶ 6-7].

*C. The Trustee's Business Judgment*

As outlined by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"):

The court's obligation in § 363(b) sales is to assure that optimal value

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

is realized by the estate under the circumstances. The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's.

*In re Lahijani*, 325 B.R. 282, 288–89 (9th Cir. B.A.P. 2005).

Debtor calls into question the Trustee's business judgment, stating that the Trustee lacks the "requisite business judgment in real estate" to consider, analyze and accept offers on the Zelzah Property. Contrary to Debtor's evaluation, the Trustee has been a chapter 7 trustee since 1998 and also has been a chapter 11 trustee in cases involving real estate. In those capacities, the Trustee has operated rental properties and sold over one hundred properties [doc. 164, Decl. of Nancy Zamora, ¶ 2]. Based on the Trustee's record of experience, she may properly be afforded business judgment deference.

*D. Sufficient Marketing and Reasonableness of Price*

Debtor argues that the Zelzah Property has not been sufficiently marketed, because the price contemplated in the Motion is below market value. In support of this contention, Debtor points to the Property Radar Estimate and the Schultz Declaration attached to the Opposition.

The Trustee is correct that the Property Radar Estimate is not persuasive evidence that the purchase price is too low. First, there is no evidence suggesting that Property Radar has made any inspection of the Zelzah Property's interior or exterior in assessing its value. In fact, the Property Radar Estimate does not set forth any procedures by which Property Radar estimated the \$335,700 value [doc. 163, Exh. 1]. In addition, the Property Radar Estimate includes "comp. sales" and "comp. listings" figures for the Zelzah Property of \$300,319 and \$244,872, respectively [doc. 163, Exh. 1]. Given that these figures are at or below the sale price for the Zelzah Property, this data indicates that the sale price is fair and reasonable.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

The Schultz Declaration is similarly unpersuasive. First, Mr. Schultz's purported marketing strategy, which includes both online advertisements and mailers, appears comparable to the Broker's online marketing approach [Schultz Decl., ¶ 3]. As explained in the Reply, the Broker has engaged in marketing efforts for the Zelzah Property, including listing the property on the multiple listing service and on various internet sites that offer listing services. Furthermore, the Broker's marketing strategy resulted in multiple inquiries and three offers on the Zelzah Property. As of the date of the Reply, the Broker continued to market the Zelzah Property to generate overbids. [doc. 164, Decl. of Behnaz Tavakoli, ¶¶ 3-6 and Exhibit 2 thereto]. These efforts and offers establish that the Zelzah Property has been thoroughly marketed and that the sale price (which is subject to overbid) reflects the Zelzah Property's market value [doc. 164, pp. 6-7].

Mr. Schultz states that the \$299,000 purchase price is only speculatively the best purchase price for the Zelzah Property. However, this assertion is based on Mr. Shultz's assumption that the property was not sufficiently marketed and his review of the multiple listing service for the Zelzah Property. In coming to his conclusion regarding the purchase price, Mr. Schultz does not claim to have seen the property in person [Schultz Decl., ¶¶ 4-6].

*E. Sub-Rosa Plan*

Debtor argues that the sale of the Zelzah Property, along with the sale of the Hillsborough and Woodley Properties, would constitute an impermissible "sub-rosa" plan. Debtor further indicates that she believes that the Trustee must first establish that a plan is infeasible before liquidating assets.

In *Lionel*, the Second Circuit Court of Appeals considered a proposed pre-confirmation sale, noting that such a sale would be appropriate if there was an "articulated business justification" for it. *Lionel*, 722 F.2d at 1070. Furthermore, the proposed sale does not take the place of a plan. After paying the allowed claims of creditors secured by the Zelzah Property, the Trustee is not proposing to distribute net proceeds to other creditors at this time [doc. 164, p. 10]. See *In re Air Beds, Inc.* 92 B.R. 419 (9th Cir. B.A.P. 1988). Consequently, the contemplated sale of the Zelzah Property does not constitute an impermissible "sub-rosa" plan.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

**F. *Due Process Considerations***

Debtor argues that the Motion should not be approved because § 363 sales are an inappropriate violation of the due process rights of Debtor and creditors to the estate. However, Debtor and the estate's creditors have been served with notice of the sale, and have had an opportunity to object. Furthermore, the Trustee has demonstrated that the sale of the Zelzah Property will generate funds with which she can make distributions to creditors. Finally, pursuant to the overbid procedures built into the sale terms, Debtor and any other interested party has the opportunity to bid on the Zelzah Property. Consequently, Debtor has not demonstrated that any party in interest's due process rights have been violated.

**III. CONCLUSION**

The Court will grant the Motion.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#23.10** Status conference re chapter 11 case  
fr. 12/7/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Per hearing held on 12/21/17 at 1:00 PM,  
status conference is scheduled for 5/17/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10289 Brian P. Sullivan**

**Chapter 7**

**#24.00** Motion by Daniel Sherlock and Jason Blaylock for entry of order dismissing debtor's chapter 7 case with a bar to refiling

Docket 46

**Tentative Ruling:**

The Court will continue this matter to **May 10, 2018 at 1:00 p.m.** for a status conference. In light of the Ninth Circuit Court of Appeals' decision in *Zolg v. Kelly (In re Kelly)*, 841 F.2d 908 (9th Cir. 1988), the debtor's debts are primarily consumer debts.

**No later than May 3, 2018**, the parties must file witness and exhibit lists for an evidentiary hearing on this matter. At the status conference, the parties should be prepared to discuss dates for the evidentiary hearing. The evidentiary hearing will address the following issues:

- (1) The terms and validity of the prenuptial agreement between the debtor and Dr. Levin;
- (2) Whether the debtor and Dr. Levin are a "single economic unit" for purposes of the means test under 11 U.S.C. § 707(b)(2); and
- (3) The debtor's schedules, as originally filed and subsequently amended, as concerns whether or not he filed his latest chapter 7 petition not in good faith.

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

**Debtor(s):**

Brian P. Sullivan

Represented By  
Paul F Ready

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 12, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10289 Brian P. Sullivan**

**Chapter 7**

**#25.00** Motion for relief from stay [AN]

DANIEL SHERLOCK AND JASON BLAYLOCK  
VS  
DEBTOR

Docket 47

**Tentative Ruling:**

In light of the Court's ruling on the motion to dismiss the debtor's bankruptcy case (matter no. 24), the Court will continue this matter to **May 10, 2018 at 1:00 p.m.**

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

**Debtor(s):**

Brian P. Sullivan

Represented By  
Paul F Ready

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Tuesday, April 17, 2018**

**Hearing Room 303**

8:30 AM

**1:18-10121 Fernando De La Luz**

**Chapter 7**

**#1.00** Reaffirmation Agreement between debtor and Ally Bank

Docket 9

**Party Information**

**Debtor(s):**

Fernando De La Luz

Represented By  
R Grace Rodriguez

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 17, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10225 Diana Martinez**

**Chapter 7**

**#2.00** Reaffirmation Agreement between debtor and  
Nissan Motor Acceptance Corporation

Docket 9

**Party Information**

**Debtor(s):**

Diana Martinez

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 17, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10268 Sarah Jane Voogt**

**Chapter 7**

**#3.00 Reaffirmation Agreement between debtor and  
American Honda Finance Corporation**

Docket 8

**Party Information**

**Debtor(s):**

Sarah Jane Voogt

Represented By  
Michael E Clark

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 17, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10387 Manuel San Juan Tobias**

**Chapter 7**

**#4.00** Reaffirmation Agreement between debtor and  
Nissan Motor Acceptance Corporation

Docket 24

**Party Information**

**Debtor(s):**

Manuel San Juan Tobias

Represented By  
Elaine O San Juan

**Trustee(s):**

David Seror (TR)

Pro Se



United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

1:16-13009 Ronald Asher Halper and June Halper

Chapter 7

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 12/6/17, 1/24/18; 3/14/18

Docket 41

\*\*\* VACATED \*\*\* REASON: Notice of withdrawal of motion filed  
3/26/18. [Dkt. 69]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ronald Asher Halper

Represented By  
Rob R Nichols

**Joint Debtor(s):**

June Halper

Represented By  
Rob R Nichols

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Jennifer C Wong

**Trustee(s):**

David Seror (TR)

Represented By  
Robert A Hessling

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. ROF III LEGAL TITLE TRUST 2015-1  
VS  
DEBTOR

fr. 1/10/18; 2/21/18 (stip); 3/14/18

Docket 55

\*\*\* VACATED \*\*\* REASON: APO entered 3/26/18 [doc. 67]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Angela Cordero Britton

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10747 Alvin Isidro**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

SETERUS, INC.  
VS  
DEBTOR

fr. 3/14/18(stip)

**Stip to resolve matter fld 3/16/18**

Docket 36

**\*\*\* VACATED \*\*\* REASON: Order entered 3/19/18 approving stip/apo.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alvin Isidro

Represented By  
Robert M Aronson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10411 Sharon Azoulay**

**Chapter 13**

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

fr. 3/14/18

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order transferring case to the Honorable  
Martin R. Barash for all further proceedings entered on 4/6/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sharon Azoulay

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

1:17-11136 Capri Coast Capital, Inc.

Chapter 11

#4.10 Motion for relief from stay [PP]

MESSAGE ENVY FRANCHISING, LLC  
VS  
DEBTOR

fr. 4/11/18

Docket 232

\*\*\* VACATED \*\*\* REASON: notice of withdrawal filed 4/13/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#5.00** Motion for relief from stay [AN]

IDFIX, Inc.  
VS  
DEBTOR

Docket 137

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

Kandy Kiss of California, Inc. (the "Debtor") is a California corporation that was in the business of design, product development, wholesale manufacture, and sale of apparel to large retailers. IDFIX, Inc. ("Movant") produced fabric and garments for the Debtor.

In 2015, the Debtor and Movant had a dispute over certain garments that Movant produced for the Debtor. The Debtor refused to pay for the alleged nonconforming garments, which cost a total of \$2,462,097.88 [doc. 137, Exh. A]. On July 14, 2016, the Debtor filed in state court a complaint against Movant and three other defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "State Court Action") [doc. 137, Exh A]. On December 1, 2016, Movant filed a cross-complaint against the Debtor and three other cross-defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "Cross-Complaint") [doc. 137, Exh A].

On February 14, 2017, an involuntary petition was filed against the Debtor. The State Court Action was stayed pursuant to the automatic stay. On September 19, 2017, the order for relief was entered in the Debtor's case [doc. 63].

On March 15, 2018, Movant filed a motion for relief from the automatic stay to proceed with the Cross-Complaint against the Debtor in the State Court Action (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

"Motion") [doc. 137]. In the Motion, Movant argues that the Court must abstain from hearing the State Court Action because mandatory abstention under 28 U.S.C. § 1334 (c) constitutes cause for lifting the automatic stay. Movant also argues that relief from the automatic stay is proper using the multi-factor test from *In re Sonnax Indus., Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990).

On April 4, 2018, the chapter 7 trustee ("Trustee") filed an opposition to the Motion (the "Opposition") [doc. 139]. On April 11, 2018, Movant filed a reply to the Opposition [doc. 140].

**II. DISCUSSION**

**A. Mandatory Abstention**

28 U.S.C § 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Mandatory abstention under 28 U.S.C. § 1334(c)(2) requires that the following seven elements be met:

(1) A timely motion; (2) a purely state law question; (3) a non-core proceeding § 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists.

*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. B.A.P. 2001).

For the Court to be required to abstain, all seven elements of mandatory abstention must be present. Here the Motion was timely filed and there is no independent basis

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

Chapter 7

for federal jurisdiction outside of Title 11 of the United States Code as the Cross-Complaint alleges purely state law questions. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise raise any bankruptcy issues or impede the Trustee's administration of the case. Moreover, the State Court Action was commenced in state court and the state court has jurisdiction over the State Court Action.

However, it is unclear whether the state court can timely adjudicate the State Court Action. Compare *In re Eastport Associates*, 935 F.2d 1071, 1078-79 (9th Cir. 1991) (holding that the state court could not timely adjudicate the matter where parties would have to start litigation over in state court); and *In re Smith*, 389 B.R. 902, 921 n. 18 (Bankr. D. Nev. 2008) (noting that "there can be no timely adjudication" where the bankruptcy court can hear the matter before the state court); with *Bowen Corp. v. Sec. Pac. Bank Idaho, F.S.B.*, 150 B.R. 777, 784 (Bankr. D. Idaho 1993) (finding the state court could adjudicate the matter much more quickly because a motion for summary judgment had already been filed and was pending before the action was removed to federal court). "[T]he party moving for abstention will bear the burden of demonstrating that a state court action can be timely adjudicated." *In re First All. Mortgage Co.*, 269 B.R. 449, 455 (C.D. Cal. 2001). There is no trial set in the State Court Action and few resources have been expended in preparation for a trial in the State Court Action [doc. 140]. The parties would need to prosecute the State Court Action from start to finish because it was stayed in the early stages of litigation. Movant has not provided any evidence that the State Court Action can be timely adjudicated. On the other hand, if necessary, this Court could estimate Movant's claim sooner than the state court would be able to fully adjudicate the State Court Action and liquidate Movant's claim. Accordingly, it does not appear that all elements for mandatory abstention have been met.

**B. Relief from the Automatic Stay**

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. See *Christensen v. Tucson Estates, Inc.* (*In re Tucson Estates, Inc.*), 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum 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 as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also Sonnax*, 907 F.2d at 1286 (listing factors). When applied to the pending Motion and case, the *Sonnax* factors do not appear to support relief from the automatic stay.

***Whether the relief will result in a partial or complete resolution of the issues***

This factor weighs against lifting the automatic stay. Allowing the State Court Action to proceed in state court would not allow immediate and complete resolution of the dispute between Movant and the Debtor. The state court can adjudicate the claims and cross-claims between the parties; however, Movant would still need to file a proof

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

of claim in the Debtor's bankruptcy case in order to receive a distribution from the Trustee.

***The lack of any connection with or interference with the bankruptcy case***

This factor weighs against lifting the automatic stay. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise deal with any bankruptcy issues. However, if the Trustee were required to litigate the State Court Action in a different forum, such litigation may impede the Trustee's administration of the case.

***Whether the foreign proceeding involves the debtor as a fiduciary***

The State Court Action does not involve the Debtor's conduct as a fiduciary.

***Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

The Trustee contends that Movant has not met its burden to show that extraordinary circumstances exist for deviating from the well-established bankruptcy claims resolution process. The Court agrees.

***Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It is unclear whether the Debtor's insurance carrier, if any, has paid for costs of defending the State Court Action.

***Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

Movant argues there is no prejudice because all creditors will get paid a pro-rata share. However, the cost of liquidating Movant's claim in the State Court Action, potentially without any reason for doing so, may decrease the amount of funds available for unsecured creditors. This factor weighs against lifting the automatic stay.

***Whether the judgment claim arising from the foreign action is subject to***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

CONT...

**Kandy Kiss of California, Inc.**  
*equitable subordination under Section 510(c)*

Chapter 7

At this time, it does not appear that any resulting judgment that Movant may obtain in the State Court Action would be subject to equitable subordination.

***The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

This factor weighs in favor of lifting the automatic stay. The Debtor is one of four cross-defendants in the State Court Action. If the Court lifted the automatic stay, it would minimize potentially duplicative litigation in two different forums.

***Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

This factor weighs against lifting the automatic stay, because the State Court Action has not progressed to the point where the parties are prepared for trial. The State Court Action was stayed at the early stages of litigation. The parties have not expended significant resources in the State Court Action that would go to waste if the Court denies the Motion.

***The impact of the stay on the parties and the "balance of the hurt."***

Entry of judgment in the State Court Action would prejudice the Debtor. However, the Court can prohibit any enforcement of the judgment against the Debtor or the Debtor's estate during the pendency of its bankruptcy case. Still, lifting the stay does not appear warranted here because the State Court Action is at a very early stage, and allowing the parties to litigate the State Court Action may impede the administration of the Debtor's estate.

Movant contends that the Court lifting the automatic stay will ensure a level playing field because the Trustee is currently free to prosecute the State Court Action, but Movant is prevented from doing so by the automatic stay. However, the Trustee has not determined whether he will prosecute any of the Debtor's affirmative claims. Because the Trustee is not presently prosecuting the State Court Action, there is no need at this time for the Court to level the playing field. Accordingly, the "balance of the hurt" weighs against lifting the automatic stay.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

**III. CONCLUSION**

In light of the foregoing, Movant has not shown that mandatory abstention under 28 U.S.C. § 1334(c)(2) applies to the State Court Action. In addition, the *Sonnax* factors weigh against lifting the automatic stay. Movant has not shown sufficient cause under 11 U.S.C § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the Debtor.

Notwithstanding the foregoing, Movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 in the Debtor's bankruptcy case.

The Trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10486 Carlos Bohorquez**

**Chapter 7**

**#6.00** Motion for relief from stay [PP]  
(2015 Toyota Camry)

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Carlos Bohorquez Pro Se

**Trustee(s):**

Nancy J Zamora (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10486 Carlos Bohorquez**

**Chapter 7**

**#7.00** Motion for relief from stay [PP]  
(2015 Toyota Prius)

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Carlos Bohorquez Pro Se

**Trustee(s):**

Nancy J Zamora (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

**#8.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Deny request for relief under 11 U.S.C. § 362(d)(4). Movant has not made a prima facie case that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors.

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Debtor(s):**

Jorge Alberto Romero II Pro Se

**Trustee(s):**

David Keith Gottlieb (TR) Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

Docket 72

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12952 Jin Ju Sung**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

CHRISTIANA TRUST  
VS  
DEBTOR

Docket 24

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Jin Ju Sung**

**Chapter 13**

**Debtor(s):**

Jin Ju Sung

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, April 18, 2018

Hearing Room 301

9:30 AM

1:17-13103 Steven Joseph Dombrovsky

Chapter 13

#11.00 Motion for relief from stay [RP]

CITIMORTGAGE INC  
VS  
DEBTOR

**Stipulation for adequate protection filed 4/10/18**

Docket 28

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 4/11/18.  
[Dkt.38]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Steven Joseph Dombrovsky

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10479 Jeff Reyes**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jeff Reyes

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jeff Reyes**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10641 Abdoumalik Abdoulladjanov**

**Chapter 13**

**#13.00** Motion for relief from stay [RP]

HLTN LOANS LLC  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Insufficient notice has been given to the borrower under the note at issue.

Unless an appearance is made at the hearing on April 18, 2018, the hearing is continued to **May 16, 2018 at 9:30 a.m.**, and movant must provide 21-days' written notice to the debtor and borrower under the note at issue of the continued hearing date and the deadline to file an opposition 14 days before that date.

Appearances on April 18, 2018 are excused.

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

**Debtor(s):**

Abdoumalik Abdoulladjanov Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10798 Narkell Hobbs-James**

**Chapter 13**

**#14.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 9

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Narkell Hobbs-James

Represented By  
Devin Sawdayi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10353 Esteban Bustamante**

**Chapter 7**

Adv#: 1:18-01013 Sky One Federal Credit Union v. Bustamante

**#15.00** Status conference re complaint for: determination of the dischargeability of debt pursuant to 11 U.S.C. sec 523(A)(2)

Docket 1

**Tentative Ruling:**

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on June 20, 2018.**

It appears that the plaintiff has not requested entry of default under Local Bankruptcy Rule 7055-1(a). The plaintiff must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **June 1, 2018.**

If the plaintiff will be seeking to recover attorneys' fees, the plaintiff must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

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

**Debtor(s):**

Esteban Bustamante

Represented By  
Anthony E Contreras

**Defendant(s):**

Esteban Bustamante

Pro Se

**Plaintiff(s):**

Sky One Federal Credit Union

Represented By  
Alana B Anaya

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Esteban Bustamante**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10409 Olga Campos**

**Chapter 13**

Adv#: 1:18-01033      Ramar v. Campos

**#16.00**      Status conference re: notice of removal

Docket      1

**Tentative Ruling:**

The Court will remand this proceeding to state court.

**I.      BACKGROUND**

On November 4, 2016, HSBC Bank USA, N.A. ("HSBC") conducted a foreclosure sale of the real property located at 7730 Quakertown Avenue, Los Angeles, California 91306 (the "Property") [doc. 1, Exh. A].

On December 9, 2016, Olga Campos ("Defendant") filed chapter 13 case no. 1:16-bk-13500-MB (the "First Bankruptcy Case"). On February 8, 2017, the First Bankruptcy Case was dismissed because Defendant did not appear at the § 341(a) meeting and/or did not make the required preconfirmation plan payments [case no. 1:16-bk-13500-MB, doc. 22].

On March 28, 2017, Defendant filed an action in state court against HSBC and other defendants (the "State Court Action") [case no. 1:18-bk-10409-VK, doc. 7, Exh. 1]. In the State Court Action, Defendant alleged causes of action including wrongful foreclosure, negligence, unfair trade practices, cancellation of note, quiet title, and fraud in the initial loan processing and failure to provide truthful disclosure. On July 6, 2017, HSBC and the other defendants filed a demurrer in the State Court Action. On August 17, 2017, the state court entered a tentative ruling on the demurrer in the defendants' favor. On August 22, 2017, Defendant filed a request for dismissal of the State Court Action.

On May 16, 2017, Defendant filed chapter 13 case no. 1:17-bk-1192-VK (the "Second Bankruptcy Case"). On June 16, 2017, the Second Bankruptcy Case was converted to chapter 7 at Defendant's request [Case no. 1:17-bk-1192-VK, docs. 13, 14]. On September 5, 2017, the Second Bankruptcy Case was dismissed because Defendant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

did not appear at the § 341(a) meeting [case no. 1:17-bk-1192-VK, doc. 22].

On December 18, 2017, Haim Ramar ("Plaintiff") purchased the Property at a lender-arranged auction. On December 29, 2017, the grant deed transferring the Property to Plaintiff was recorded [doc. 1, Exh. A]. On December 31, 2017, Plaintiff served Defendant with a three-day notice to quit [doc. 1, Exh. A]. On January 5, 2018, Plaintiff filed an unlawful detainer action against Defendant (the "UD Action") [doc. 1, Exh. A]. Trial in the unlawful detainer action was scheduled for February 16, 2018.

On February 15, 2018, one day before the unlawful detainer trial, Defendant filed chapter 13 case no. 1:18-bk-10409-VK (the "Third Bankruptcy Case"). In her petition, Defendant listed the Property's address as her residence address [case no. 1:18-bk-10409-VK, doc. 1, at p.2]. Defendant listed the Property in her Schedules A/B. *Id.*, at p. 12. Defendant did not list any creditors with claims secured by the Property. *Id.*, at p. 23. Defendant listed the following unsecured claims in her Schedule E/F:

- HSBC, \$15,000
- KS Enterprise, \$10,000
- Plaintiff, \$1,500
- HSBC, \$75,000

*Id.*, at pp. 24-25. In addition, in her Schedule J, Defendant disclosed that she pays \$750 per month for rental income or home ownership expenses. *Id.*, at p. 32.

On February 16, 2018, Plaintiff filed a motion for relief from stay to proceed with the UD Action (the "RFS Motion") [case no. 1:18-bk-10409-VK, doc. 10]. On March 14, 2018, the Court held a hearing on the RFS Motion. The Court granted relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and allowed Plaintiff to proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the Property [case no. 1:18-bk-10409-VK, doc. 26].

On March 15, 2018, the automatic stay in the Third Bankruptcy Case terminated pursuant to 11 U.S.C. § 362(c)(3). On March 22, 2018, the Court entered the order on the RFS Motion [case no. 1:18-bk-10409-VK, doc. 34].

On March 20, 2018, the state court held a hearing on the UD Action [doc. 4].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Olga Campos**

**Chapter 13**

Defendant did not appear at the hearing. *Id.* The state court granted possession of the Property to Plaintiff. *Id.* On March 20, 2018, Defendant removed the unlawful detainer action to this Court (the "Notice of Removal") [doc. 1]. Also on March 20, 2018, Defendant filed a notice of conversion to chapter 7 in the Third Bankruptcy Case [case no. 1:18-bk-10409-VK, doc.31]. On March 21, 2018, the Court converted the Third Bankruptcy Case to chapter 7 [case no. 1:18-bk-10409-VK, doc.32].

On March 20, 2018, the Court the issued an order to show cause re remand of the UD Action (the "OSC") [doc. 2]. On March 22, 2018, Plaintiff timely filed a notice of objection to removal (the "Objection") [doc. 4]. Defendant did not timely file a reply to the OSC or the Objection.

On April 2, 2018, a Los Angeles County Sheriff lockout was scheduled pursuant to the state court order granting Plaintiff possession of the Property [doc. 6, ¶ 7]. On April 2, 2018, the state court granted Defendant a temporary restraining order preventing Plaintiff from enforcing the lockout. *Id.* at ¶ 7.

## **II. DISCUSSION**

As an initial matter, Defendant did not comply with either the Federal Rules of Bankruptcy Procedure ("FRBP") or the Local Bankruptcy Rules ("LBR") in removing the UD Action. FRBP 9027(a)(1) requires "a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy judge." FRBP 9027. Here, Defendant did not provide any such statements pursuant to FRBP 9027(a)(1).

Moreover, under LBR 9027-1(d), "[u]nless otherwise ordered by the court, the party filing a notice of removal must file with the clerk: (A) [a] copy of the docket of the removed action from the court where the removed litigation was pending; and (B) [a] copy of every document on the docket . . . within 30 days after the date of filing of the notice of removal . . . ." Defendant has not filed any of these required documents.

### ***A. Does the Court Have Jurisdiction?***

Removal of state court actions to federal district court is governed by 28 U.S.C. §§

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

1441-1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. Under § 1334, "the district courts shall have original and exclusive jurisdiction of all cases under title 11." "A matter 'arises under' the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

A case is "related to" a case under title 11 if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Only matters over which the district courts have jurisdiction under § 1334 are in turn referred to the bankruptcy courts. 28 U.S.C. § 157(a) ("Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.").

The Court strictly construes the removal statutes against removal jurisdiction, and jurisdiction must be rejected if there is any doubt as to the right of removal. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992). The party seeking removal bears the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

burden of establishing federal jurisdiction. *See Prize Frize, Inc. v. Matrix, Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999).

Here, the only conceivable type of jurisdiction this Court would have for a state unlawful detainer action would be "related to" jurisdiction. "[A] civil proceeding is 'related to' the bankruptcy if its outcome could conceivably have any effect on the bankruptcy estate. The proceeding need not be against the debtor or the debtor's property. It is sufficient if the 'outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate.'" *ACI-HDT Supply Co.*, 204 B.R. at 237.

The foreclosure of the Property occurred in 2016. On December 18, 2017, Plaintiff purchased the Property at auction, and recorded the grant deed transferring the Property to Plaintiff on December 29, 2017. Defendant filed the Third Bankruptcy Case on February 15, 2018. As a result, Defendant has no claim to the Property and the Property is not property of Defendant's bankruptcy estate in the Third Bankruptcy Case. Because the Property is not property of Defendant's bankruptcy estate, the UD Action has no bearing on the administration of the Third Bankruptcy Case. Accordingly, the Court does not have jurisdiction over the UD Action because it is not "related to" the bankruptcy.

It appears that the Court does not have jurisdiction over the UD Action and that remand is warranted. However, even if this Court does have jurisdiction, the factors discussed below favor remand.

***B. Remand***

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

(quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

*Id.*, 508 n. 2; see also *In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007).

The majority of the *Enron* factors weigh in favor of remanding the UD Action. Remand would have no effect on the efficient administration of Defendant's bankruptcy estate. The Property was foreclosed upon prepetition and the Property is not part of Defendant's bankruptcy estate. The UD Action concerns only state law issues, with which the state court has greater expertise.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

There does not appear to be any jurisdictional basis for this Court to hear this claim outside of § 1334. Because the Property is not property of Defendant's bankruptcy estate, there is essentially no relatedness between the UD Action and Defendant's bankruptcy case.

There is no core proceeding here. The state court has fully adjudicated the UD Action. The expertise of a bankruptcy court is not needed to determine any of these state law issues. There is similarly no need to "sever" state law claims. All of the claims are state law claims.

"The ninth factor, the burden on the bankruptcy court's docket, is neutral. Bankruptcy courts are sufficiently busy that a multi-week trial is difficult to accommodate, but it can be done if necessary." *In re Franklin*, 179 B.R. 913, 928 n40 (Bankr.E.D.Cal. 1995). There is nothing particular about this adversary that implies it would be more difficult or burdensome for this Court than any other adversary proceeding. However, the issues are solely state law issues, which are not within this Court's expertise. This may be more time consuming for this Court to have to research and rule on than for a state court.

It appears that the UD Action was removed here solely as forum shopping. Defendant appears to have removed the UD Action to delay Plaintiff's possession of the Property and to stay in the Property as long as possible. In addition, the parties do not appear to have consented to a jury trial in this Court.

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *In re Enron Corp.*, 296 B.R. 505, 509 (C.D. Cal. 2003). Here, the UD Action involves a California-centric plaintiff and California-centric transactions—as discussed above, there is no particular reason why the expertise of this Court is necessary to determine the issues presented in the UD Action. There is no impact on the administration of the bankruptcy estate if the case stays in state court.

Finally, Plaintiff has been prejudiced because the UD Action already proceeded to judgment in state court. Plaintiff should not have to relitigate the UD Action because

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**      **Olga Campos**  
of Defendant's removal.

**Chapter 13**

**C.      *Was Removal Improper and is Plaintiff Entitled to Attorneys' Fees?***

On granting a motion for remand, the federal court may order the payment of "just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). Section 1447(c), and the costs and fees provision in particular, applies to bankruptcy-related removals under § 1452(a). *See Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 128-29 (1995) ("There is no express indication in § 1452 that Congress intended that statute to be the exclusive provision governing removals and remands in bankruptcy."); *Daleske v. Fairfield Communities, Inc.*, 17 F.3d 321, 324 (10th Cir. 1994) ("[T]he provisions of 28 U.S.C. § 1447(c) apply to cases removed under § 1452(a) as well."); *Billington v. Winograde*, 207 B.R. 935, 942-43 (Bankr. E.D. Cal. 1997) (awarding fees pursuant to § 1447(c) for case removed to bankruptcy court); *see also Miller v. Cardinale*, 280 B.R. 483, 494 (9th Cir. B.A.P. 2002), *aff'd on other grounds*, 361 F.3d 539 (9th Cir. 2004) ("It is well settled that § 1447(c) applies to bankruptcy removals and remands.").

The decision whether to award costs "is within the discretion of the district court, and bad faith need not be demonstrated." *Moore v. Permanente Med. Grp., Inc.*, 981 F.2d 443, 448 (9th Cir. 1992). "Even after the statute was amended [to remove the word 'improvidently'], 'the propriety of the defendant's removal continues to be central in determining whether to impose fees.'" *Daleske*, 17 F.3d at 324 (quoting *Miranti v. Lee*, 3 F.3d 925, 928 (5th Cir. 1993)).

Under § 1447(c), whether the removal was "improper" or "defective" is neither dispositive nor the proper inquiry. *Gardner v. UICI*, 508 F.3d 559, 562 (9th Cir. 2007). Instead, the proper inquiry turns on the reasonableness of the removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136, 126 S.Ct. 704, 708-09 (2005). Absent unusual circumstances, the court may award costs and expenses under § 1447(c) only if the removing party lacks an objectively reasonable basis for seeking removal. *Id.* Conversely, if the removing party has an objectively reasonable basis for removal, costs and expenses should be denied. *Id.*; *see also Lussier v. Dollar Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008) ("Resolving a circuit split on the issue, *Martin* explicitly rejected the view that attorney's fees should presumptively, or automatically, be awarded on remand.").

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

In *Martin*, the Supreme Court discussed the "large objectives" of § 1447(c) as follows:

The process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff. The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria is satisfied.

546 U.S. at 140.

Here, it is unclear why Defendant removed the UD Action to this Court. Judgment in the UD Action was entered on March 20, 2018, just prior to removal. As such, there does not appear to be anything left for this Court to adjudicate in the UD Action. The removal of the fully-adjudicated UD Action was objectively unreasonable. In addition, in the Notice of Removal, Defendant did not provide any statutory basis for jurisdiction over the UD Action. Furthermore, the UD Action does not have any connection with the Third Bankruptcy Case, because the Property is not property of the Defendant's bankruptcy estate. Accordingly, the Court has discretion to award attorney's fees to Plaintiff incurred as a result of the objectively unreasonable removal.

### **III. CONCLUSION**

In light of the foregoing, the Court will remand the UD Action to state court. **No later than May 2, 2018**, Plaintiff must submit a supplemental declaration supported by admissible evidence of fees and costs incurred in connection with opposing the removal of the UD Action.

Plaintiff must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Olga Campos**

**Chapter 13**

**Debtor(s):**

Olga Campos

Pro Se

**Defendant(s):**

Olga Campos

Pro Se

**Plaintiff(s):**

Haim Ramar

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#17.00** Motion for an order dismissing plaintiff's claims for relief for non-dischargeability pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure without leave to amend

from: 3/14/18(stip)

Docket 6

**Tentative Ruling:**

Grant as to all causes of action, with leave to amend.

**I. BACKGROUND**

On August 21, 2017, Daniel Scott Borshell ("Defendant") filed a voluntary chapter 7 bankruptcy petition. The deadline for objecting to Defendant's discharge was November 27, 2017. On December 4, 2017, Defendant received a discharge.

On November 21, 2017, Oggi's Pizza and Brewing Company ("Plaintiff") filed an adversary complaint (the "Complaint") against Defendant for nondischargeability of the debt owed to Plaintiff under 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6). The Complaint alleged the following facts:

On April 19, 2001, Defendant and Plaintiff entered into a franchise agreement (the "Franchise Agreement"), under which Defendant and others owned and operated one of Plaintiff's franchises in Vista, California. Various issues arose under the Franchise Agreement, and Plaintiff served Defendant with multiple notices of default. (Complaint, ¶ 23.) On August 6, 2009, Plaintiff notified Defendant of the termination of the Franchise Agreement as a result of Defendant's repeated defaults. (Complaint, ¶ 24.) Thereafter, Defendant failed to comply with the termination provisions and requirements set forth in the Franchise Agreement, and continued to use Plaintiff's name, logo, commercial symbol, service marks, trade names and other intellectual property, and continued to hold himself out as a franchisee of Plaintiff.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Daniel Scott Borshell**  
(Complaint, ¶ 25.)

**Chapter 7**

After Plaintiff terminated the Franchise Agreement, Defendant operated as a franchisee of Plaintiff but did not use the same high quality food ingredients required of franchisees and did not pay any royalty fees. This conduct "damaged the reputation and goodwill" of Plaintiff's franchise. (Complaint, ¶ 27.)

Defendant used statements in writing regarding his financial condition that were materially false; "on which Plaintiff [sic], to whom Defendant was liable; and that Defendant caused to be made or published with intent to deceive. (Complaint, ¶ 18.) Defendant made such false representations with the intent to deceive Plaintiff and to secure payment for the fraudulent sale of the Plaintiff's intellectual property before Plaintiff could defend its property. (Complaint, ¶ 28.)

At a later time, Defendant "secured a new buyer for his restaurant, holding himself out as a franchisee of [Plaintiff's] restaurants." (Complaint, ¶ 29.) Defendant "colluded" with the other defendants to keep the fact of the transfer secret from Plaintiff "and perpetuated intentional misrepresentations to [Plaintiff] in an attempt to defraud them about the true nature of the transaction. [Plaintiff] relied on the false statements to their detriment." (Complaint, ¶ 29.) In addition, Defendant's actions complicated Plaintiff's "ability to enforce its rights against him, recover its [i]ntellectual [p]roperty and prevent the unauthorized purchaser from misappropriating their property and damaging their reputation." (Complaint, ¶ 30.)

Defendant additionally made false statements when he held himself out as conducting a franchise of Plaintiff after the Franchise Agreement terminated. Defendant falsely represented that he possessed rights as a franchisee and retained rights to assign or convey the intellectual property. (Complaint, ¶ 32.)

At all times, a fiduciary relationship existed between Plaintiff and Defendant "in performance of their responsibilities as [f]ranchisee as to the intellectual and personal property of the [f]ranchisor." (Complaint,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Daniel Scott Borshell**

**Chapter 7**

¶ 36.) Pursuant to the Franchise Agreement, Plaintiff entrusted Defendant "with certain rights to use and the obligation to care and protect [Plaintiff's] intellectual and personal property." (Complaint, ¶ 38.) Defendant breached his fiduciary duty when he refused to return and continued to use and benefit from Plaintiff's intellectual property after the Franchise Agreement was terminated. (Complaint, ¶ 41.) In addition, Defendant transferred the intellectual property without the required consent of Plaintiff and refused to unwind the transaction. (Complaint, ¶ 43.) Defendant's breach of his fiduciary duty to Plaintiff led to an unauthorized purchaser usurping Plaintiff's intellectual property. (Complaint, ¶ 44.)

On August 28, 2009, Plaintiff filed an action against Defendant and other defendants (collectively, "State Court Defendants") in state court (the "State Court Action"). (Complaint ¶ 7.) In December 2010, the state court entered a stipulated judgment and order for permanent injunction. That order enjoined the State Court Defendants from: (1) using Plaintiff's name, logo and commercial symbol on any menus, advertisements, promotional material on any item within, or for sale at, Defendant's restaurant; (2) representing to the public that the Vista, California restaurant was a franchise of Plaintiff; and (3) using Plaintiff's products and recipes. (Complaint, ¶ 8.)

On December 16, 2011, after a jury trial, the jury returned a verdict finding Defendant liable for conversion, concealment, conspiracy, and misappropriation of trade secrets. (Complaint, ¶ 10.) The jury also found that Defendant had acted willfully and/or maliciously in his misappropriation of trade secrets, and that "[Defendant] and his company, DSB Enterprises, Inc., acted with malice, oppression, or fraud." (Complaint, ¶ 11.) The jury awarded Plaintiff \$1,740,000 in damages against Defendant (jointly and severally with other defendants) with post judgment interest at 10% per annum. (Complaint, ¶ 12.)

On December 22, 2017, Defendant filed a motion for an order dismissing Plaintiff's claims for relief for nondischargeability pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6) (the "Motion") [doc. 6] as well as a request for judicial notice (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Daniel Scott Borshell**

**Chapter 7**

"RJN") [doc. 7]. The RJN included the state court's judgment dated January 23, 2012 (the "Judgment") [Exh. A], as well as a minute order regarding the State Court Defendants' motions for nonsuit in the State Court Action (the "Minute Order") [Exh. B].

The Judgment provides, in relevant part:

- Defendant's motion for nonsuit was granted as to both causes of action for intentional and negligent misrepresentation, and as to punitive damages. (Judgment, at p. 3.)
- Defendant was found liable for conversion, concealment, conspiracy, misappropriation of trade secrets. (*Id.*, at pp. 4–5.)
- Defendant acted "willfully and/or maliciously" as to misappropriation of trade secrets. (*Id.*, at p. 5.)
- The State Court Defendants are "jointly and severally" liable for the sum of \$1,740,000. (*Id.*, at p. 9.)

The Minute Order provides, in relevant part:

**–Intentional Misrepresentation/Negligent Misrepresentation.**

The court grants the motion [for nonsuit] on these claims with respect to Daniel Borshell and DSB. The only misrepresentation argued was as to the P&L statements, but the evidence of justifiable reliance is wholly absent. Indeed, Ms. Hadjis expressly did *not* rely on them; she sent Mr. Borshell's sister back (twice) to do them over. . . .

**–Punitive Damages Claims.**

The court finds that plaintiffs have failed to offer clear and convincing evidence of oppression, fraud or malice by [Daniel Borshell]. As to "fraud," the court has granted the non-suit as noted immediately above. The evidence is overwhelming that Mr. Borshell was desperate to sell the restaurant and get out from under the debt and other challenges of running it. Acting in one's self interest does not, without more, equate



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT...

**Daniel Scott Borshell**  
to oppression, fraud or malice.

Chapter 7

(Doc. 7, Exh. B, at p. 4; emphasis in original.)

On February 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 11]. The Opposition attached a state court amended judgment dated February 14, 2014 (the "Amended Judgment") [Exhibit A]. On April 11, 2018, Defendant filed a reply to the Opposition [doc. 18].

**II. LEGAL STANDARDS**

**A. Rule 12(b)(6)**

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted)(citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). "Federal Rule of Civil Procedure 8(a) (2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. 544, 555 (U.S. 2007) (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Daniel Scott Borshell**  
658, 660 (9th Cir. B.A.P. 1994).

**Chapter 7**

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). Parties must instead "rely on summary judgment and control of discovery to weed out unmeritorious claims." *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168–69 (1993). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

A court may also consider 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 copy attached to the [Rule] 12 (b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). "The court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

**B. Rule 9(b)**

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged . . .". *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

**C. Leave to Amend**

Where a complaint is insufficient under Rule 12(b)(6), a court has discretion to grant the plaintiff leave to amend. Under Rule 15(a)(2) "the court should freely give leave [to amend] when justice so requires." However, dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT...

**Daniel Scott Borshell**

**Chapter 7**

possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

**D. Claim Preclusion**

In California, claim preclusion "bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them." *Citizens for Open Gov't v. City of Lodi*, 205 Cal. App. 4th 296, 324 (2012). "Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit." *Id.* Claim preclusion bars "not only issues that were actually litigated but also issues that could have been litigated." *Id.*

**E. Issue Preclusion**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment . . . . In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (9th Cir. B.A.P. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245). "The party asserting preclusion bears the burden of establishing the threshold requirements." *Harmon*, at 1245. "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, at \*3 (quoting *In re Kelly*, 182 B.R. 255,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... **Daniel Scott Borshell**

**Chapter 7**

258 (9th Cir. B.A.P. 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996)). "Any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the [issue preclusive] effect." *Kelly*, at 258.

### III. DISCUSSION

#### A. *Documents Not Attached to the Complaint*

As an initial matter, the parties in their pleadings discuss at length documents that were not attached to the Complaint. Although the Complaint did not attach the Judgment, the Complaint refers to and relies upon the Judgment. The Judgment was attached to the RJN in support of the Motion. It does not appear that either party has questioned the authenticity of the Judgment. Consequently, under *Marder*, the Court may consider that document.

The Complaint refers to and relies upon the Franchise Agreement. However, neither Plaintiff nor Defendant provided a copy of the Franchise Agreement for the Court's review. Therefore, under *Marder*, the Court cannot consider the Franchise Agreement in assessing the sufficiency of the claims in the Complaint.

#### B. *Defendant's Liability*

In the Motion, Defendant argues that the Judgment did not apportion damages as to each cause of action, or as to each of the State Court Defendants. (Motion, at p. 4.) However, the Judgment provides that the State Court Defendants are "jointly and severally" liable for the judgment amount of \$1,740,000. (Doc. 7, Exh. A, p. 9.)

#### C. *Claim and Issue Preclusion*

Defendant argues that the Judgment, which granted a motion for nonsuit in part, has preclusive effect as to Plaintiff's fraud allegations. Pursuant to California Code of Civil Procedure ("C.C.P.") § 581c(c), "[i]f [a] motion [for nonsuit] is granted, unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits." *See also Am. Broad. Companies, Inc. v. Walter Reade-Sterling, Inc.*, 43 Cal. App. 3d 401, 406 (1974).

With respect to claim preclusion, it appears that the judgment for nonsuit is a final adjudication on the merits pursuant to C.C.P. § 581c(c). Plaintiff and Defendant were

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT...

**Daniel Scott Borshell**

**Chapter 7**

parties in the State Court Action and are parties in the pending adversary proceeding. However, it is not clear that the causes of action described in the Judgment are the same as Plaintiff's claim for relief under § 523(a)(2)(A), as alleged in the Complaint.

With respect to issue preclusion, Plaintiff and Defendant were parties in the State Court Action and are parties in the pending adversary proceeding. It appears that the issues of intentional and negligent misrepresentation were actually litigated and necessarily decided in the State Court Action, and that the judgment of nonsuit is a final adjudication on the merits pursuant to C.C.P. § 581c(c). However, it is not clear that the issues described in the Judgment are identical to the issue of fraud alleged in the Complaint.

Defendant argues that the Minute Order has a preclusive effect on Plaintiff's fraud and malice allegations. With respect to Defendant, the Minute Order indicates that the state court granted the motion for nonsuit as to the intentional misrepresentation and negligent misrepresentation claims. The state court noted that the "only misrepresentation argued was as to the P&L statements, but the evidence of justifiable reliance is wholly absent." However, without additional information and context, the Court cannot assess the impact of this determination, as set forth in the Minute Order.

In the Minute Order, the state court also held that "plaintiffs have failed to offer clear and convincing evidence of oppression, fraud or malice by this defendant." The Minute Order further states that the state court granted the nonsuit as to fraud (*i.e.*, intentional and negligent misrepresentation). However, the state court's determination that there was no **clear and convincing** evidence of oppression, fraud or malice does not preclude the existence of fraud under § 523(a)(2)(A), where the burden of proof is a preponderance of the evidence (see below). Accordingly, and to the extent that the Court can take judicial notice of the matters contained in the Minute Order, it is not clear that the statements in the Minute Order establish any preclusive effect in the pending adversary proceeding.

**D. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Daniel Scott Borshell**  
insider's financial condition."

**Chapter 7**

To prevail on a § 523(a)(2)(A) claim, Plaintiff must prove by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (9th Cir. B.A.P. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

"It is not necessary that misrepresentations be communicated directly to the creditor so long as there is reason to expect that the creditor will rely on the misrepresentation and that her conduct will be detrimentally influenced thereby." *In re Cleary*, 487 B.R. 633, 642 (Bankr. D. Md. 2013), *aff'd*, Case No. ADV 08-00264, 2013 WL 6713188 (D. Md. Dec. 18, 2013), *aff'd sub nom. Limberger v. Cleary*, 585 F. App'x 165 (4th Cir. 2014) (citing *Sempione v. Provident Bank of Md.*, 75 F.3d 951, 962 (4th Cir.1996)).

In the Complaint, Plaintiff alleges that Defendant continued to operate as a franchisee of Plaintiff after the termination of the Franchise Agreement. In doing so, Defendant continued to hold himself out as a franchisee of Plaintiff to the general public, when in fact he was not. Plaintiff further alleges that Defendant made an intentional misrepresentation to the buyer of Defendant's restaurant that Defendant was still a franchisee of Plaintiff. In doing so, Defendant allegedly obtained the proceeds of the sale through false pretenses, false representations, and actual fraud.

Assuming the above allegations to be true, it does not appear that the foregoing representations were made by Defendant to Plaintiff. Under *Cleary*, misrepresentations need not be made directly to a creditor if there is reason to expect

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... Daniel Scott Borshell

Chapter 7

that a creditor will rely on the misrepresentation. Notwithstanding *Cleary*, it is not apparent from the face of the Complaint that Plaintiff has sufficiently alleged that there was reason to expect that Plaintiff relied on Defendant's misrepresentations (which are not described), or how Plaintiff did so.

Plaintiff makes conclusory allegations that the above misrepresentations to the general public and to the buyer "were made by [Defendant] with the intent to deceive [Plaintiff][.]" (Complaint, ¶ 28.) Plaintiff further alleges that "[Defendant] colluded with the other Defendants to keep the fact of the transfer secreted from [Plaintiff] and perpetrated intentional misrepresentations to [Plaintiff] in an attempt to defraud them about the true nature of the transaction. [Plaintiff] relied on the false statements to their detriment." (Complaint, ¶ 29.) Such conclusory allegations are insufficient to state a claim for relief under § 523(a)(2)(A) and Rule 9(b), which requires that fraud allegations be pled with specificity.

In its Opposition, Plaintiff argues that its fraud allegations are sufficient because the state court made a finding that the Debtor engaged in concealment, which requires an intentional misrepresentation. Under California law:

The required elements for fraudulent concealment are:

(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact.

*Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 606 (2014). Plaintiff refers in the Complaint to the finding of concealment in the Judgment. However, to state a claim for relief under § 523(a)(2)(A), the Complaint does not include sufficient facts regarding that determination set forth in the Judgment.

***E. 11 U.S.C. § 523(a)(4)***

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... Daniel Scott Borshell

Chapter 7

capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

**1. Existence of Trust/Fiduciary Relationship**

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (9th Cir. B.A.P. 2001). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit Court of Appeals has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (9th Cir. B.A.P. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 n.6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.* at n.7 (quoting *Royal Indem. Co. v. Sherman*, 269 P.2d 123, 125 (1954)). "Trusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... Daniel Scott Borshell

Chapter 7

Here, Plaintiff does not allege in the Complaint that any term of the Franchise Agreement, statute, or case law gave rise to an express or technical trust under California law. Plaintiff alleges that "[a]t all times, a fiduciary relationship existed between Plaintiff[] and [Defendant][.]" (Complaint, ¶ 36.) Plaintiff also alleges that "pursuant to the terms of the Franchise Agreement[,]" Defendant "owed a fiduciary duty to care for [Plaintiff's] [i]ntellectual [p]roperty, on behalf of [Plaintiff] and to protect and preserve the property." (*Id.*, ¶ 38.) These allegations are insufficient to indicate the existence of an express or technical trust under California law.

**2. Defalcation**

Under § 523(a)(4), debts related to "defalcation while acting in a fiduciary capacity," are nondischargeable. "Defalcation is defined as 'misappropriation of trust funds or money held in any fiduciary capacity.'" *In re Lewis*, 97 F.3d 1182, 1187 (9th Cir. 1996).

In the Complaint, Plaintiff alleges that Defendant misappropriated Plaintiff's intellectual property when Defendant continued to operate the franchise after the Franchise Agreement was terminated and sold the franchise and the intellectual property to a buyer without Plaintiff's approval. These allegations do not appear to concern Defendant's misappropriation of funds held in a trust, as required to state a claim for defalcation under § 523(a)(4).

**F. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." A tort judgment against a debtor does not necessarily establish the "willful and malicious injury" elements unless the underlying tort required findings of both "willful" and "malicious" conduct by a debtor. *See In re Busch*, 311 B.R. at 657, 668–69 (Bankr. N.D.N.Y. 2004); *In re Peklar*, 260 F.3d 1035, 1037–1038 (9th Cir. 2001); *In re Plyam*, 530 BR 456, 469–70 (9th Cir. B.A.P. 2015).

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62 (1998). Debts "arising from recklessly or negligently inflicted injuries do not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Daniel Scott Borshell**

**Chapter 7**

fall within the compass of § 523(a)(6)." *Id.* at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997). In addition, "[m]alice can be inferred based on the nature of the wrongful act." *In re Ormsby*, 591 F.3d 1199, 1207 (9th Cir. 2010).

Section 523(a)(6) generally applies to torts rather than to contracts, and an intentional breach of contract generally will not give rise to a nondischargeable debt, unless it is accompanied by tortious conduct which results in willful and malicious injury. *Jercich*, 238 F.3d at 1205; *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008) ("an intentional breach of contract cannot give rise to nondischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law").

In the Complaint, Plaintiff alleges that Defendant "engaged in willful and malicious conduct as well as in the conversion of [Defendant's] assets." (Complaint, ¶ 15.) Plaintiff alleges that the Judgment establishes that Defendant was liable for conversion, concealment, conspiracy, and misappropriation of trade secrets. (*Id.*, ¶ 16.) Plaintiff further alleges that Defendant "acted willfully and/or maliciously[,]" and acted "willfully, maliciously, and with deliberate intent to deceive [Plaintiff]." (*Id.*, ¶ 17.)

Plaintiff alleges that the Judgment established that Defendant "acted willfully and/or maliciously" with regard to misappropriation of trade secrets. (Judgment, at p. 5.) However, it is unclear from this equivocal language in the Judgment whether this finding is sufficient to state a claim for "willful *and* malicious" injury under § 523(a)(6). Moreover, Plaintiff was not awarded punitive damages against Defendant; this suggests that Defendant's conduct was not willful and malicious, within the meaning of § 523(a)(6).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Daniel Scott Borshell**

**Chapter 7**

Because Defendant was held liable in the State Court Action for conversion, Plaintiff contends that Plaintiff has a meritorious claim for relief under § 523(a)(6). However, as held by the Ninth Circuit Court of Appeals:

A judgment for conversion under California substantive law decides only that the defendant has engaged in the "wrongful exercise of dominion" over the personal property of the plaintiff. It does not necessarily decide that the defendant has caused "willful and malicious injury" within the meaning of § 523(a)(6). A judgment for conversion under California law therefore does not, without more, establish that a debt arising out of that judgment is non-dischargeable under § 523(a)(6).

*Peklar*, 260 F.3d at 1039. Pursuant to *Peklar*, the state court's determination that Defendant was liable for conversion, standing alone, does not suffice to state a claim for relief under § 523(a)(6).

**IV. CONCLUSION**

In light of the foregoing, the Court will grant the Motion as to all causes of action, with leave to amend.

Defendant must submit an order within seven (7) days. If Plaintiff elects to file an amended complaint, it must file an amended complaint **no later than 14 days** after the entry of the order. Any response to an amended complaint must be filed **no later than 14 days** from the date of the filing of an amended complaint.

**Party Information**

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Represented By  
Noreen A Madoyan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Daniel Scott Borshell**

**Chapter 7**

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Prevolos

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#18.00** Status conference re complaint to determine dischargeability of a debt due to fraud, breach of fiduciary duties, and willful and malicious injury

fr. 1/24/18; 3/14/18(stip)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Pro Se

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Prevolos

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#19.00** State Bar of California's motion to compel release of information held by the Social Security Administration regarding plaintiff Marilyn S. Scheer

Docket 323

**\*\*\* VACATED \*\*\* REASON: Notice rescheduling hearing for 5/2/18 at 2:30 PM. [Dkt. 326]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#20.00** Defendant's motion for judgment on the pleadings

fr. 4/4/18

Docket 16

**Tentative Ruling:**

**I. BACKGROUND**

On June 30, 2017, Steven Mark Rosenberg ("Plaintiff") filed his voluntary chapter 7 petition. On October 10, 2017, Plaintiff received his chapter 7 discharge [1:17-bk-11748-VK, doc. 21]. On November 27, 2017, Debtor filed an adversary complaint ("Complaint") against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, Inc. ("Ocwen"), Alliance Bancorp, Inc. ("Alliance"), Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc. ("MERS"), One West Bank ("One West"), and Does 1-25.

The Complaint alleges causes of action for violation of 11 U.S.C. § 524(a), violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(B) and (C), fraudulent concealment, violation of 18 U.S.C. § 157 and declaratory relief, and demands a jury trial. The Complaint bases these claims on the following facts:

Plaintiff is the sole beneficiary of the Isadore and Norma P. Rosenberg Trust, and a personal representative of the Estate of Isadore Rosenberg, who passed away in 2008. Complaint, ¶ 8.

On March 15, 2007 an alleged deed of trust (the "DOT") securing a \$390,000 promissory note was recorded against real property owned by Isadore Rosenberg located at 15814 Septo Street, North Hills, CA 91343 (the "Property"). The DOT was recorded for the benefit of Ampro Mortgage, a division of United Financial Mortgage Corporation ("Ampro"), the predecessor to Alliance as the lender, and MERS as nominee for the lender. Isadore was feeble with macular degeneration at the time and could not have

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

signed the documents. Complaint, ¶ 9.

On April 16, 2008, Ampro assigned the DOT to IndyMac Bank, FSB ("IndyMac") via MERS, but that assignment was not acknowledged until August 2008 [doc. 1, Exh. 1]. Ampro filed a chapter 7 bankruptcy petition and was dissolved on February 1, 2008. By the time of the purported assignment, Ampro had been dissolved.

Also on April 16, 2008, IndyMac transferred the DOT to Deutsche Bank as trustee for Alliance 2007-OA1, but was not acknowledged until December 29, 2009 [doc. 1, Exh 2]. A third "correction of assignment" was recorded on March 17, 2017. Complaint, ¶ 30.

The Pooling and Service Agreement regarding the DOT (the "PSA") provided that the depositor, master servicer, trustee or the securities administrator were not authorized to accept contributions to the real estate mortgage investment conduits after the closing date on May 30, 2007. The appropriate processing for the Property was never properly transferred to Alliance Bancorp 2007 OA-1 per the requirements of the PSA prospectus. Consequently, Defendants have never had proper title to the property. Complaint ¶ 16, 27-31, 36-38.

The DOT and accompanying documents (*e.g.*, the grant deed and adjustable rate rider) bears a signature forged by Isadore Rosenberg's former caregiver, David Curtis Harder. The Complaint includes a Forensic Handwriting Expert Summary Report [doc. 1, Exh. 4].

On August 29, 2009, Plaintiff filed an action via the probate proceedings for Isadore Rosenberg's estate, seeking to determine title to the Property and asserting that the DOT was a forgery (the "Probate Action"). Complaint, ¶ 13-14. Plaintiff filed a request to voluntarily dismiss the Probate Action in January 2015, and the probate court granted the request with prejudice. Plaintiff appealed, and the appellate court reversed the order of dismissal, ordering the petition be dismissed without prejudice. The Probate Action was dismissed without prejudice on January 19, 2017. Complaint, ¶ 20.

Since 2008, One West and Deutsche Bank have initiated a number of wrongful



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

foreclosure proceedings against Plaintiff. One West and Deutsche Bank do not have rights to foreclosure based on legitimate documentation, because Alliance never had a proper loan. Based on this, under the California Homeowner's Bill of Rights, Plaintiff seeks redress of material violations of the foreclosure process.

None of the entities listed as Defendants in this adversary proceeding filed a proof of claim in the main bankruptcy case. At the time the adversary complaint was filed, a nonjudicial foreclosure of the Property was scheduled for November 28, 2017.

On January 23, 2018, Plaintiff voluntarily dismissed the Complaint with respect to Defendants CIT Bank (f.k.a. One West Bank, erroneously sued as One West Bank) and Alliance Bancorp [doc. 13]. That dismissal left Deutsche Bank, MERS and Ocwen ("Defendants") as the only remaining parties to this action.

On February 13, 2018, Ocwen and MERS (together, "Movants") filed a motion for judgement on the pleadings (the "Motion") [doc. 16]. The Motion was accompanied by a request for judicial notice in support of the Motion (the "RJN") [doc. 17]. Movants argue that the allegations in the Complaint regarding forgery, fraud and rescission are time barred, and that the challenge to the foreclosure based on the alleged broken chain of title fails because Plaintiff has no standing. Movants also argue that the matter in the complaint is non-core and they will not consent to final judgment.

On March 9, 2018, Deutsche Bank, the current beneficiary of the loan secured by the DOT, filed a joinder in the Motion and the RJN (the "Joinder") [doc. 24]. Because the allegations against Deutsche Bank are identical to the allegations against Movants, Deutsche Bank joins in each and every argument and authority in the Motion. Deutsche Bank also states that it does not consent to the entry of final orders or judgments in this case because it is a non-core matter.

On March 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition"). The Opposition asserts, among other things that: (1) Plaintiff filed this adversary proceeding in 2017, as a continuation of litigation that was commenced in 2009; (2) that he has standing to challenge the assignments under California law; (3) that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Motion gives rise to estoppel, and Movants have impliedly admitted all the allegations in the Complaint are true; (4) the bankruptcy case has not been properly discharged because there was no proper 11 U.S.C. § 341(a) meeting; and (4) a Rule 12(c) motion is not appropriate because Plaintiff has initiated the discovery process by having an initial conference pursuant to Federal Rule of Civil Procedure 26.

On March 28, 2018, Defendants filed a reply to the Opposition (the "Reply") [doc. 32]. In the Reply, Movants request that the Motion be granted with prejudice (without leave to amend).

## **II. DISCUSSION**

### **A. Jurisdiction**

Movants argue that the claims asserted in the Complaint will have no effect on Plaintiff's discharge in this case, and there are no issues to be determined under bankruptcy law. However, Movants do not cite any authority to support the blanket statement that a bankruptcy court does not have jurisdiction to hear matters which do not affect the discharge in a case.

Movants also argue that even if Plaintiff prevailed, the estate would remain insolvent. However, Plaintiff's Schedule D [doc. 1, p. 20] reflects that Ocwen (as servicer for Deutsche Bank) is the only creditor with a claim secured by the Property. If that lien were entirely voided, the Trustee could sell the Property, and the nonexempt equity could leave the estate with funds to pay creditors.

Finally, Movants and Deutsche Bank assert that they do not consent to the entry of final orders or judgments by this Court. This does not deprive the Court of jurisdiction; the Court can issue findings of fact and conclusions of law regarding non-core matters for approval by the district court. In addition, some of the causes of action in the complaint are based on bankruptcy rules or statutes. The Court may enter final judgment regarding core matters without the parties' consent. 28 U.S.C. § 157(b) (1) ("Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11... and may enter appropriate orders and judgments....").

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

**B. Standard for Judgment on the Pleadings**

Federal Rule of Civil Procedure ("Rule") 12(c), applicable through FRBP 7012, provides that "[a]fter the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings." In deciding a Rule 12(c) motion, the court applies the same standards applicable to a Rule 12(b)(6) motion. *See Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1054, fn. 4 (9th Cir. 2011) ("Rule 12(c) is 'functionally identical' to Rule 12(b)(6)").

In resolving a Rule 12(c) motion, the court can consider (without converting the motion to a summary judgment): (a) the complaint and answer; (b) any documents attached to or mentioned in the pleadings; (c) documents not attached but "integral" to the claims; and (d) matters subject to judicial notice. *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011); *Massey v. Ojaniit*, 759 F.3d 343, 347-348 (4th Cir. 2014).

However, under Rule 12(d), 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."

"A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine*, 143 F.3d 1196, 1120 (9th Cir. 1998). Nonetheless, when they contradict matters subject to judicial notice, the court need not accept alleged facts as true. *Sears, Roebuck & Co. v. Metropolitan Engraver, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956).

A motion to dismiss pursuant to Rule 12(b)(6):

will only be granted if the complaint fails to allege enough facts 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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT...

**Steven Mark Rosenberg**

**Chapter 7**

that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted)(citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). "[Rule] 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (U.S. 2007)(citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

### **C. Leave to Amend**

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted). Dismissal without leave to amend is appropriate when the court is satisfied that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

**D. Timing of the Motion**

Plaintiff asserts that the Motion was not timely brought because discovery has already opened. However, Rule 12(c) allows for a motion for judgment on the pleadings "after the pleadings are closed—but early enough not to delay trial." The opening of discovery has no effect on this timeframe. In addition, as Movants point out, the Court has not yet scheduled a motion cut-off deadline or a trial date. Consequently, the Motion was timely filed.

**E. Statute of Limitations**

Movants assert that any claims regarding forgery, cancellation or rescission are time barred under California law. Under California Code of Civil Procedure ("CCCP") § 337, "An action upon any contract, obligation or liability founded upon an instrument in writing" must be brought within four years. Under CCCP § 338(d) an "action for relief on the ground of fraud or mistake" must be brought within three years.

"Equitable tolling applies to situations in which a party has several legal remedies, pursues one such remedy reasonably and in good faith, and then turns to the second remedy after the statute has expired on that remedy." Equitable Tolling of Statute of Limitations, California Practice Guide: Administrative Law Ch. 16-D. Equitable tolling can also be applied where the claimant "has actively pursued his judicial remedies by filing a defective pleading or where he has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 90 (1990).

Plaintiff filed the Probate Action on August 29, 2009. Plaintiff was aware of the fraud and forgery causes of action at that time. Plaintiff argues that this action is merely an extension of the Probate Action, which concluded after the limitations period ended, in 2017. There is no authority supporting this argument. This proceeding, a bankruptcy court adversary proceeding, is not a continuation of the state court proceeding. Consequently, based on California law, Plaintiff's claims of fraud or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...** Steven Mark Rosenberg  
forgery are time-barred.

**Chapter 7**

**F. 11 U.S.C. § 524(a)(2)**

Plaintiff argues that, as a result of 11 U.S.C. § 524(a)(2), Defendants are barred from attempting to collect their debt secured by the Property. Pursuant to § 524(a)(2), a discharge in a bankruptcy case "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived."

Plaintiff's allegations do not indicate that Defendants have taken any action which violates the discharge injunction in his bankruptcy case. Plaintiff asserts that Defendants are in the process of proceeding with a judicial foreclosure against the Property. Such an action is not in violation of the discharge injunction, which applies only to a debtor's *personal liability*. Discharge does not impair a creditor's right to proceed *in rem* against property by which its claim is secured. *In re Blendheim*, 803 F.3d 477, 493-494 (9th Cir. 2015).

**G. FRBP 3001(c)(2)(B) and (C)**

Plaintiff alleges that Defendants violated FRBP 3001(c)(2)(B) and (C) by failing to file a proof of claim and accompanying documents. Under 11 U.S.C. § 501(a), a creditor "may file a proof of claim." A "claim" is a right to payment without regard to whether the creditor has filed a proof of claim. 11 U.S.C. § 101(5). Secured creditors must generally file proofs of claim in order to receive payment from the bankruptcy estate; however, "a lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim." FRBP 3002(a).

Unless affirmative action is taken to avoid a lien, a "bankruptcy discharge extinguishes only one mode of enforcing a claim—an in personam action;" liens and other secured interests survive the bankruptcy. *Johnson v. Home State Bank*, 501 U.S. 78, 79 (1991). In other words, a bankruptcy discharge has the effect of relieving a debtor's personal liability, but it does not extinguish debts secured by property. Consequently, regardless of Plaintiff's discharge, Defendants may take action to satisfy their secured claim through the sale of the Property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Furthermore, a failure to file a proof of claim does not give rise to a cause of action which Plaintiff may assert. As concerns Plaintiff, the only effect of a secured creditor's failure to file a proof of claim is that the secured creditor may not take part in distributions from the estate, if distributions to creditors from unencumbered, nonexempt property ever become available. Accordingly, Plaintiff has not stated a cause of action under FRBP 3001(c)(2), nor can Plaintiff amend the Complaint in any way that would state one.

#### **H. Fraudulent Concealment**

Fraudulent concealment of a cause of action effectively "tolls" that cause of action for the period for which it was fraudulently concealed. In order to assert that a cause of action was tolled under a fraudulent concealment theory, a plaintiff must show: (1) the substantive elements of fraud; and (2) an excuse for late discovery of the facts. *Investors Equity Life Holding Co. v. Schmidt*, 195 Cal. App. 4th 1519 (4th Dist. 2011). The elements of an action for fraud and deceit based on concealment are:

(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage."

*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.*, 6 Cal. App. 4th 603, 612-613 (1992).

Plaintiff asserts his fourth cause of action on the theory that Defendants have known that their chain of assignment was broken throughout the course of the state law proceeding and Plaintiff's bankruptcy proceeding, and they fraudulently concealed that information. The Court need not assess whether Plaintiff has properly alleged fraudulent concealment, or timely brought the allegation, if Plaintiff cannot demonstrate that he sustained damage as a result of the concealed fact. Plaintiff has not demonstrated that he has standing to recover based on an improper assignment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

In California, *post-foreclosure* wrongful foreclosure actions based on improper chain of title are appropriate. See *Yvanova v. New Century Mortgage Corp.*, 62 Cal.4th 919 (2016); *Glaski v. Bank of Am., Nat'l Ass'n*, 218 Cal. App. 4th 1079 (2013). However, California Courts of Appeal have held that a homeowner lacks standing in a pre-foreclosure action to challenge a foreclosure sale. *Saterbak v. JP Morgan Chase Bank, N.A.*, 245 Cal. App. 4th 808 (2016); *Yhudai v. IMPAC Funding Corp.*, 1 Cal.App.5th 1252 (2016).

Furthermore, under *Yvanova*, Plaintiff lacks standing to argue the voidability of the assignment of the DOT. In that case, a plaintiff brought a post-foreclosure suit for wrongful foreclosure of her property. The plaintiff argued that the lender lacked an interest in her property giving it the right to foreclose because its interest was based on an assignment made after the closing date in the pooling and service agreement. The California Supreme Court reasoned:

California law does not give a party personal standing to assert rights or interests belonging solely to others... When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself.

*Yvanova*, 62 Cal. 4th at 936. The California Supreme Court held that void assignments do confer standing on a borrower to bring a post-foreclosure action. *Id.* at 942-943.

Plaintiff has not asserted that any party to the PSA or the assignments have taken action to render the assignments void, and Plaintiff, who was not a party to the PSA, does not have the power to bring a suit to void it. Accordingly, Plaintiff has not yet suffered harm giving him standing to bring a suit based on the allegedly improper assignments of the DOT. Moreover, because Plaintiff's failure to state a claim is based on lack of standing, Plaintiff cannot amend the Complaint to state a claim for relief on the current facts.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

In any event, Plaintiff would have a problem demonstrating damages based on the alleged improper chain of assignments. Regardless of the specific holder of the assignment, the Property is encumbered. The harm to Plaintiff is not a result of the allegedly improper assignment or the failure of any Defendant to reveal the nature of the assignments to him. Consequently, Plaintiff has not asserted a cause of action based on fraudulent concealment of the allegedly improper assignments of the DOT.

**I. 18 U.S.C. § 157**

Pursuant to 18 U.S.C. § 157:

a person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

- (1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;
- (2) files a document in a proceeding under title 11; or
- (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

This statute deals with criminal bankruptcy fraud, and criminal matters are generally not within the jurisdiction of bankruptcy courts. *See Matter of Hipp, Inc.*, 895 F.2d 1503, 1511 (5th Cir. 1990). In addition, as an initial matter, Plaintiff has not stated a cause of action under 18 U.S.C. § 157 because the statute does not create a private cause of action. *See Lee v. United States Agency for Int'l Dev.*, 859 F.3d 74, 76 (D.C. Cir. 2017) (holding that no private right of action is necessarily created by a criminal statute which does not expressly create one).

A bankruptcy court may refer a matter to the district court and a district attorney where the court believes that the statute has been violated and such referral is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

appropriate. *See In re McDonald*, 497 B.R. 489, 493 (Bankr. D.S.C. 2013). Here, however, it is not clear that Defendants have violated 18 U.S.C. § 157. Plaintiff has not made allegations regarding any specific filing made by any Defendant in the bankruptcy proceeding. The only filing by any Defendant in the main case is a request for special notice by Deutsche Bank. Plaintiff alleges that Defendants made misrepresentations to him and to the court in the Probate Action regarding the validity of their title, but such a representation is not punishable under § 157 (which creates criminal liability for fraudulent *filings* in a *bankruptcy* proceeding). Consequently, Plaintiff has not asserted a cause of action upon which relief can be granted under § 157, and would not be able to amend the Complaint to assert one.

**J. Declaratory Relief**

Declaratory relief is a procedural device for granting a remedy. It does not create any substantive rights or causes of action. *Harris County Texas v. MERSCORP Inc.*, 791 F.3d 545, 552 (5th Cir. 2015). Courts inquire whether there is a "substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

Plaintiff argues that declaratory relief is appropriate based on the actions of Defendants to foreclose on the Property. However, as discussed above, Plaintiff has not asserted any actual wrongdoing with respect to the foreclosure actions. In addition, based on his fraudulent concealment theory, Plaintiff cannot assert any harm pre-foreclosure. Therefore, Plaintiff does not have a "substantial controversy" with Defendants upon which declaratory relief can be granted, and he would not be able to amend the Complaint to assert one.

**III. CONCLUSION**

For the foregoing reasons, the Court will grant the motion without leave to amend as to Movants and Deutsche Bank.

Movants must submit the order within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, April 18, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

**Party Information**

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

CIT BANK, N.A. (f/k/a One West

Represented By  
KRISTIN WEBB

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

- #21.00** Status conference re complaint :
- (1) violation of 11 U.S.C. code 524(a)(2)-debtor discharge injunction.
  - (2) violation of FRBP, Rule 3001(c)(s)(c); failure to file proof of claim re security interest statement of amount to cure default as of petition filing date.
  - (3) violation of FRBP, rule 3001(c)(3)(C), failure to file attachment to appropriate official form re security interest in debtor's principal residence.
  - (4) fraudulent concealment
  - (5) violation of U.S.C. code 157; fraud and deceit
  - (6) declaratory relief

fr. 1/24/18; 3/14/18: 4/4/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust	Pro Se
Ocwen Loan Servicing, Inc	Pro Se
Alliance Bancorp, Inc	Pro Se
Alliance Bancorp Estate Trustee	Pro Se
MERS Mortgage Electronic	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 18, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg Chapter 7**

One West Bank Pro Se

DOES 1 through 25, inclusive Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg Pro Se

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, April 23, 2018**

**Hearing Room 301**

9:30 AM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial re: conference on plaintiff's 11 U.S.C. § 523 claims

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, April 23, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Darin Davis**

**Chapter 7**

Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 24, 2018**

**Hearing Room 301**

9:30 AM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, April 24, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Darin Davis**

**Chapter 7**

Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 25, 2018**

**Hearing Room 301**

9:30 AM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Trial concluded on 4/24/18.**

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, April 25, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Darin Davis**

**Chapter 7**

Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 26, 2018**

**Hearing Room 301**

9:30 AM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Trial concluded on 4/24/18.**

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, April 26, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Darin Davis**

**Chapter 7**

Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, April 27, 2018**

**Hearing Room 301**

9:30 AM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**Tentative Ruling:**

Trial having been completed on April 24, 2018, the Court intends to post its trial ruling on May 11, 2018, at or about 3:00 p.m.

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, April 27, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Darin Davis**

**Chapter 7**

Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 303**

9:30 AM

**1:17-10828 Melinda Diane McCracken**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

REVERSE MORTGAGE SOLUTIONS, INC  
VS  
DEBTOR

fr. 4/4/18

Docket 26

**\*\*\* VACATED \*\*\* REASON: The sale of the subject property has rendered the motion moot [doc. 36].**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Melinda Diane McCracken

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

1:18-10417 Deborah Lois Adri

Chapter 11

#2.00 Motion for relief from stay [AN]

MOSHE ARDI  
VS  
DEBTOR

fr. 4/4/18

Docket 28

**Tentative Ruling:**

Grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

**I. BACKGROUND**

***A. The Debtor and Creditor's Business Dealings***

In 1977, Deborah Adri (the "Debtor") and Moshe Adri ("Creditor") married. In 1983, Creditor and the Debtor formed Shoes for Sale, Inc., which funded the purchase of other ventures. In 1990, the Debtor and Creditor divorced, but they continued to work together on various business ventures. Between 1992 and 1994, the Debtor and Creditor purchased retail units in Van Nuys out of which they operated their shoe business. However, due to a decline in business, they rented out the individual units to third-party lessees. The Debtor and Creditor formed six LLCs (collectively, the "LLCs"), each of which held title to an individual unit. (Doc. 35, ¶¶ 3, 4; Exh. 1.)

In 2004, the Debtor and Creditor entered into an agreement regarding the ownership of the LLCs (the "LLC Agreement"). The LLC Agreement contains an arbitration provision stating, "Any action to enforce or interpret this Agreement or to resolve disputes between the MEMBERS or by or against any MEMBER shall be settled by arbitration in accordance with the rules of the American Arbitration Association." (Doc. 35, Exh. 1, LLC Agreement, § 10.1.)

On March 11, 2011, the Debtor filed an unlawful detainer action against Creditor on behalf of 6371-77 VNB (one of the LLCs) for Creditor's non-payment of rent.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

CONT...

**Deborah Lois Adri**

**Chapter 11**

Creditor filed a lawsuit against the Debtor and the LLCs, which was later dismissed due to lack of standing. (Doc. 35, ¶¶ 5, 6.)

***B. Creditor's Prior Bankruptcy Cases, the Settlement Agreement, and the Sale Order***

On December 12, 2012, Creditor filed a chapter 7 petition, initiating case no. 1:12-bk-20733-MB ("Creditor's Bankruptcy"). On March 18, 2013, the Debtor filed a chapter 11 petition on behalf of 6371-77 VNB, initiating case no. 1:13-bk-11840-AA (the "6371-77 VNB Bankruptcy").

On March 27, 2014, all parties executed a global settlement agreement (the "Settlement Agreement"). The Settlement Agreement provides, "The Parties stipulate that this Release Agreement may be enforced by the Court pursuant to California Code of Civil Procedure § 664.6." (Doc. 35, Exh. 2, Settlement Agreement, ¶ 4.) The Settlement Agreement also provides that "This settlement is subject to court approval." (*Id.*, ¶ 14.) The Settlement Agreement further provides that:

Following execution of this Agreement, [the Debtor] shall pay, indemnify and hold harmless [Creditor] for all past, present and future expenses related to the real estate operations of 6371-77 VNB, LLC [and other entities] including but not limited to: mortgage expenses, credit line expense, attorney's fees, accounting fees, property taxes, maintenance expenses, brokerage expenses, payroll and insurance premiums, as well as for any and all third party claims, past and present, brought against 6371-77 VNB, LLC [and other entities].

(*Id.*, at ¶ 3.)

On May 8, 2014, the bankruptcy court in the 6371-77 VNB Bankruptcy entered an order approving the Settlement Agreement (the "6371-77 VNB Settlement Agreement Order"). (Doc. 35, ¶ 11; case no 1:13-bk-11840-AA, doc. 292.) The 6371-77 VNB Settlement Agreement Order did not contain an exclusive reservation of jurisdiction in the bankruptcy court to hear disputes regarding the Settlement Agreement.

On May 6, 2014, Creditor filed a motion in Creditor's Bankruptcy to approve the Settlement Agreement [case no. 1:12-bk-20733-MB, doc. 171]. After creditor East

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

West Bank filed an opposition, Creditor voluntarily withdrew his motion to approve the Settlement Agreement [case no. 1:12-bk-20733-MB, docs. 174, 177]. East West Bank held a judgment against Creditor for alleged shortfalls in the repayment of the debt owed by 6371-77 VNB. (Adv. no. 1:18-ap-01014-VK, doc. 20, ¶ 18.)

Subsequently, Creditor settled with the chapter 7 trustee (the "Trustee Settlement"), sold his residence (the "Property"), and dismissed Creditor's Bankruptcy. (Doc. 35, ¶ 11.) The order approving the Trustee Settlement stated that the Debtor had filed an opposition to the Trustee Settlement, but she orally withdrew the opposition at the hearing. (Case no. 1:12-bk-20733-MB, doc. 388.)

The orders approving the Trustee Settlement (the "Trustee Settlement Order") and sale of the Property (the "Sale Order") specifically reserved jurisdiction over all matters regarding or related to the Trustee Settlement and sale of the Property. (Doc. 35, ¶ 12; case no. 1:12-bk-20733-MB, docs. 387, 388.)

***C. Petition to Compel Arbitration***

On October 26, 2016, Creditor filed a petition to compel arbitration against the Debtor in state court (the "Petition to Compel"). On January 24, 2017, the Debtor filed a response to the Petition to Compel, in which she stated she was agreeable to proceeding with arbitration and that she intended to file a cross-complaint against Creditor. (Adv. no. 1:18-ap-01014-VK, doc. 20-1, Exh. A, at pp. 1-2.)

The arbitrator allowed Creditor to amend the Petition to Compel. In the amended Petition to Compel (the "Amended Petition"), Creditor set forth the following causes of action:

- (1) Breach of contract
- (2) Fraud and deceit/concealment
- (3) Negligent misrepresentation
- (4) Breach of fiduciary duty
- (5) Common count — money had and received
- (6) Conversion

In her response to the Amended Petition, the Debtor did not object to the arbitrator's jurisdiction to determine the claims. Instead, the Debtor filed an answer and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

counterclaim, seeking \$300,000 from Creditor for alleged improper distributions in violation of the LLC Agreement. (Adv. no. 1:18-ap-01014-VK, doc. 14, ¶ 6; Doc. 2-15, at pp. 14–22.)

The American Arbitration Association Rules (the "AAA Rules") provide, in relevant part:

(a) The arbitrator shall have the power to shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.

. . .

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gave rise to the objection. The arbitrator may rule on such objection as a preliminary matter or as a part of the final award.

(Adv. no. 1:18-ap-01014-VK, doc. 14, ¶ 7.)

The matter was ordered to arbitration. Five days before trial, the Debtor filed her trial brief, in which she contested the jurisdiction of the arbitrator to hear the parties' dispute. (Adv. no. 1:18-ap-01014-VK, doc. 20, ¶ 17.) A two-day trial was held before the arbitrator. (Adv. no. 1:18-ap-01014-VK, doc. 14, ¶¶ 9–10.) At the arbitration trial, Creditor argued that pursuant to the Settlement Agreement, the Debtor had agreed to indemnify Creditor for all debts arising from 6371-77 VNB. According to Creditor, because the Debtor did not do so, Creditor was forced to agree to the Trustee Settlement and sell the Property in Creditor's Bankruptcy, which resulted in Creditor's loss of the equity in the Property. (Adv. no. 1:18-ap-01014-VK, doc. 20, at ¶ 18.)

On November 29, 2017, a corrected award was issued (the "Corrected Award"). (Adv. no. 1:18-ap-01014-VK, doc. 14, ¶ 10.) The Corrected Award awarded Creditor \$1,215,761 in economic damages, \$114,917.85 in attorney's fees, and \$23,156.63, and provided for other declaratory and injunctive relief.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

On December 22, 2017, Creditor filed a petition to confirm the Corrected Award (the "Petition to Confirm"). The Debtor filed an opposition to the Petition to Confirm, claiming that the arbitrator lacked jurisdiction to rule on the parties' dispute. (Adv. no. 1:18-ap-01014-VK, doc. 14, ¶ 12.) The hearing on the Petition to Confirm was set for February 21, 2018. Before the hearing on the Petition to Confirm, the state court issued a tentative ruling granting the Petition to Confirm.

On February 16, 2018—five days before the hearing on the Petition to Confirm—the Debtor filed a voluntary chapter 11 petition. On February 20, 2018, the Debtor removed the state court proceeding (the "State Court Action") to this Court.

On February 20, 2018, the Court issued the Order to Show Cause re Remand (the "OSC" [Adv. no. 1:18-ap-01014-VK, doc. 5]). On April 4, 2018, the Court held a hearing on the OSC and remanded the State Court Action. The Court's ruling on the OSC was posted as docket no. 21 in adv. no. 1:18-ap-01014-VK (the "Remand Ruling").

On March 14, 2018, Creditor filed the pending motion for relief from the automatic stay (the "Motion") [doc. 28]. The initial hearing on the Motion was continued to allow Creditor to provide sufficient notice of the Motion to all parties in interest entitled to receive such notice.

## **II. DISCUSSION**

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum 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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

CONT...

**Deborah Lois Adri**

**Chapter 11**

case.

- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also In re Sonnax Industries, Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990) (listing factors). When applied to the pending Motion and case, the *Curtis* factors appear to support relief from the automatic stay.

***Whether the relief will result in a partial or complete resolution of the issues***

This factor weighs in favor of relief, because allowing the case to proceed in state court would allow immediate and complete resolution of the dispute between Creditor and Debtor (e.g., the Corrected Award can be confirmed). The Debtor argues that she will appeal any judgment in the State Court Action. Although the Debtor argues that she will incur costs related to any such appeal, such an appeal is voluntary.

***The lack of any connection with or interference with the bankruptcy case***

Creditor argues that relief is warranted because the Debtor already listed Creditor as a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

9:30 AM

CONT...

**Deborah Lois Adri**

**Chapter 11**

creditor in her schedules, and the substantive claims were resolved in state court and all that remains is a procedural ratification of the Corrected Award. Allowing the State Court Action to proceed to judgment would avoid unnecessary relitigation of the state law issues in this Court.

***Whether the foreign proceeding involves the debtor as a fiduciary***

The State Court Action involved substantive determinations regarding damages and harm that resulted from Debtor's conduct as a fiduciary.

***Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

Creditor contends that the arbitrator was a specialized tribunal that heard and adjudicated the dispute.

***Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It is unclear if the Debtor's insurance carrier, if any, has paid for costs of defending the State Court Action. Creditor argues that any additional costs to be incurred in the State Court Action are minimal, since the Debtor's counsel need not appear at the continued hearing on the Petition to Confirm.

***Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question***

This factor is not applicable.

***Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

In light of the arbitration that already took place and was completed, allowing the State Court Action to proceed to entry of judgment would be the most cost effective means to liquidate the Creditor's claim, and no creditors have filed an opposition to the Motion.

***Whether the judgment claim arising from the foreign action is subject to***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

CONT...

**Deborah Lois Adri**  
*equitable subordination under Section 510(c)*

Chapter 11

This factor is not applicable.

***Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).***

Given that Creditor has not yet obtained a judicial lien, and is precluded from doing so at this time, it appears that this section is not applicable. However, were such a lien to arise, with respect to her residence, the Debtor may be able to avoid a judgment lien pursuant to 11 U.S.C. § 522(f). The Debtor has claimed an exemption in the amount of \$175,000 in her residence, pursuant to California Code of Civil Procedure § 704.730.

***The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

This factor weighs in favor of lifting the stay. The State Court Action is nearly complete and only requires entry of judgment. Revisiting the entire dispute in this Court would be an unnecessary duplication of effort.

***Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

All that remains in the State Court Action is entry of judgment.

***The impact of the stay on the parties and the "balance of the hurt"***

The Debtor already has had a chance to litigate her dispute with Creditor, in arbitration. If the Motion is granted, the parties would not have to expend further resources in this Court relitigating state law issues. The Court will prohibit any enforcement of the judgment against the Debtor or the Debtor's estate during the pendency of her bankruptcy case.

**III. CONCLUSION**

In light of the *Curtis* factors, the Court will grant relief from stay pursuant to 11

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

U.S.C. § 362(d)(1).

Creditor may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Creditor must submit the order within seven (7) days.

**Tentative Ruling on Creditor's Evidentiary Objections to the Declaration of Joseph G. McCarthy**

para. 2: sustain as to "It is unlikely that the appeal will be determined before the plan confirmation in this case" and ". . . the issues pending in the State Court will have to be determined by this Court anyway."

para 3: sustain as to "It makes absolutely no sense to grant relief from stay since it will subject the DIP to the costs of continuing the litigation and appeal in the State Court with no net gain for either side and which could affect the plan confirmation process" and ". . . granting relief from the automatic stay at this point will not advance any legitimate bankruptcy code purpose."

para 4: sustain as to "The issues before the State Court will necessarily involve matters that the bankruptcy court in Movant's prior bankruptcy had reserved jurisdiction. As such, the bankruptcy court has, at least ancillary jurisdiction over these issues. Any order confirming the award in State Court will not and cannot resolve these issues"; overrule as to "The arbitration award was based upon settlement agreements entered during Movant's prior bankruptcy."

para 5: sustain as to "It is unlikely that the appeal will be determined before plan confirmation in this case. I estimate that it will take at least 9 to 12 months for the order be entered, the appeal filed and briefed and a decision rendered by the court of appeals[,]" "As such, the claim will remain as a disputed unliquidated claim in this Court. Movant's alleged claim can and will be addressed in the claim procedure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

before this Court[,]" and ". . . the issues pending in the State Court will have to be determined by this Court anyway. At minimum, this Court will have to estimate the amount of the alleged claim for voting purposes."

para 6: sustain

para 7: sustain as to "The entry of an order in the State Court does not mean that the litigation is over and is not related to the bankruptcy proceeding. There is no doubt that, if the order is entered, the DIP will be appealing the decision. If such happens, this will directly affect the administration of the estate, the allowance or disallowance of the claims, confirmation of the plan[,]" and "Since there will be not be [sic] a final judgment in the case, the claim will have to be estimated for purposes of the DIP's plan or reorganization. The evidence regarding the defects in the arbitration proceeding will still come before this Court to determine the amount of the estimated claim."

para 8: sustain as to ". . . the determination of Movant's claim is a core proceeding, because these issues relate directly to the prior bankruptcies and orders, the administration of this case, as the determination of this alleged claim will surely come before this Court one way or the other."

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

1:18-10459 Cheryl Placencia

Chapter 11

#3.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

from: 3/21/18

Docket 14

**Tentative Ruling:**

Grant. Pursuant to the Court's prior ruling, on April 13, 2018, the debtor filed a declaration regarding her postpetition deed of trust payment, her ability to get contributions from family members, and her employment status. The debtor also provided timely notice to secured creditors of the date of the continued hearing.

Because neither the Order setting the continued hearing [doc. 24] nor the notice of the continued hearing [doc. 23] set forth a deadline for the filing of responses to the motion, and a creditor may appear at the hearing to oppose the relief sought in the motion, the debtor's counsel should make an appearance at the hearing.

The debtor must submit an order within seven (7) days.

**Ruling from 3/21/18**

Grant motion on an interim basis and continue hearing to **May 2, 2018 at 9:30 a.m.**

**I. BACKGROUND**

Previously, the debtor filed the following six bankruptcy cases:

Case No.	Chapter	Disposition
97-25708	13	Dismissed on 1/27/98 for failure to make plan payments
98-10704	7	Converted on 4/20/98; standard discharge on 8/3/98
10-11404	13	Dismissed on 7/29/11 for failure to make plan payments
11-20540	7	Converted on 11/9/11; standard discharge on 3/14/12
16-12629	11	Dismissed on 1/19/17 on motion by the United States Trustee
17-11847	11	Dismissed on 1/5/18 on motion by the United States Trustee

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

CONT... Cheryl Placencia

Chapter 11

*The Fifth Bankruptcy Case*

On September 9, 2016, the debtor filed chapter 11 case no. 1:16-bk-12629-VK (the "Fifth Bankruptcy Case"). In her Schedules I & J, the debtor listed her monthly income as \$11,050.00 and her monthly expenses as \$5,685.00, leaving a net monthly income of \$5,365.00. The debtor stated that she was employed as a registered nurse for three weeks, but did not give a name or address for her employer. (Case no. 1:16-bk-12629-VK, doc. 19, at pp. 20–24.)

On December 2, 2016, the United States Trustee ("UST") filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the Fifth Bankruptcy Case (the "First Motion to Dismiss") [case no. 1:16-bk-12629-VK, doc. 37]. The UST alleged that the debtor had not properly prepared her monthly operating reports and attached required bank statements, and was paying professional fees without Court approval. The debtor did not oppose the First Motion to Dismiss. On January 19, 2017, the Court entered an order granting the First Motion to Dismiss and dismissing the Fifth Bankruptcy Case [case no. 1:16-bk-12629-VK, doc. 46.]

*The Sixth Bankruptcy Case*

On July 12, 2017, the debtor filed case no. 1:17-bk-11847-VK (the "Sixth Bankruptcy Case"). In her Schedules I & J, the debtor listed her monthly income as \$5,500.00 and her monthly expenses as \$5,335.00, leaving a net monthly income of \$165.00. The debtor indicated that she was employed as a registered nurse for Senior Hospice Care for two years. (Case no. 1:17-bk-11847-VK, doc. 10, at pp. 19–22.)

On August 6, 2017, the debtor filed a motion to continue the automatic stay (the "First Motion to Continue Stay") [case no. 1:17-bk-11847-VK, doc. 20]. The Court twice continued the hearing on the First Motion to Continue Stay so that the debtor could cure her service errors. On September 20, 2017, the Court issued a ruling granting the First Motion to Continue Stay and directing the debtor to submit an appropriate order within seven days. The debtor did not submit the order.

On November 16, 2017, the UST filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the Sixth Bankruptcy Case (the "Second Motion to Dismiss") [case no.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Cheryl Placencia**

**Chapter 11**

1:17-bk-11847-VK , doc. 48]. The UST alleged that the debtor had not provided evidence of vehicle insurance coverage or monthly operating reports for August and September 2017. On January 5, 2018, the Court entered an order granting the Second Motion to Dismiss and dismissing the Sixth Bankruptcy Case [case no. 1:17-bk-11847-VK, doc. 57.]

***The Pending Bankruptcy Case***

On February 21, 2018, the debtor filed the pending case. In her pending case, the debtor's Schedules I & J indicate monthly income is \$7,350.00 and monthly expenses of \$5,825.00, leaving net monthly income of \$1,525.00. The debtor states that she has been self-employed as a registered nurse for ten years. (Doc. 1, at pp. 29–32.)

On March 9, 2018, the debtor filed a motion to continue the automatic stay (the "Second Motion to Continue Stay") [doc. 14] and an application for an order shortening time to hear the Second Motion to Continue Stay (the "Application") [doc. 15]. The Court entered an order granting the Application and setting a hearing for March 21, 2018 (the "OST") [doc. 16].

In the Second Motion to Continue Stay, the debtor alleges that in the Sixth Bankruptcy Case, she was initially compliant with UST requirements. However, the debtor became ill and could not remain compliant. In addition, the debtor states that she lost 90% of her income. The debtor states that she is substantially compliant in the pending case and "has arranged backup" in the form of family contributions to remain compliant. The debtor further states that her income has increased and stabilized. The debtor states that she is willing to provide monthly adequate protection payments to her secured lender.

**II. DISCUSSION**

As an initial matter, in the OST, the Court instructed the debtor to provide telephonic notice to the UST by March 13, 2018. In the debtor's declaration regarding service, the debtor does not state that she gave telephonic notice to the UST [doc. 19].

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

CONT...

**Cheryl Placencia**

**Chapter 11**

creditors to be stayed. Under 11 U.S.C. 362(c)(3)(C)(i)(III), a case is presumptively filed not in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a chapter 7 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

In the Second Motion to Continue Stay, the debtor states that her income has increased and stabilized since the dismissal of the Sixth Bankruptcy Case. In the Sixth Bankruptcy Case, the debtor's schedules showed monthly income of \$5,500 and monthly expenses of \$5,335.00, leaving net monthly income of \$165.00. In her pending case, the debtor's monthly income is \$7,350.00 and her monthly expenses are \$5,825.00, leaving net monthly income of \$1,525.00. In addition, the debtor states that she is compliant with UST requirements and has "arranged backup" to ensure compliance.

Notwithstanding these assertions and the lack of an opposition to her motion, the debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since her prior case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed. The debtor has made inconsistent statements regarding her work history. In the Fifth Bankruptcy Case, the debtor stated that she was employed as a registered nurse for three weeks, but did not state her employer. In the Sixth Bankruptcy Case, the debtor stated that she was employed as a registered nurse for Senior Hospice Care for two years. In her pending case, the debtor states that she has been self-employed as a registered nurse for ten years.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than March 28, 2018**, the debtor must file and serve notice of the continued hearing on *all* secured creditors. **No later than April 13, 2018**, the debtor must (i) tender her April 2018 deed of trust payment to Deutsche Bank/Nationstar in the amount of \$3,500.00 (as stated in her current Schedule J) as to the real property located at 11922 Louise Ave., Granada Hills, CA 91344; and (ii) file a declaration *supported by admissible evidence* of her employment status and her family members' ability to make contribution payments. **No later than April 25, 2018**, the debtor must file a declaration to demonstrate that she made her April 2018 deed of trust payment.

The Court will prepare the order.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cheryl Placencia**

**Chapter 11**

**Party Information**

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

1:18-10223 Viannettee Kassandra Sanchez

Chapter 7

#4.00 Motion for relief from stay [PP]

THE GOLDEN 1 CREDIT UNION  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Viannettee Kassandra Sanchez

Represented By  
Allan S Williams

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

1:18-10597 **Guadalupe Reynozo Torres**

Chapter 7

#5.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 13

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Guadalupe Reynozo Torres

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Guadalupe Reynozo Torres**

**Chapter 7**

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

9:30 AM

1:15-12781 Florencio Santana, Jr. and Betty Lena Santana

Chapter 13

#6.00 Motion for relief from stay [RP]

U.S. BANK TRUST N.A.  
VS  
DEBTOR

Docket 82

**Tentative Ruling:**

**Unless an appearance is made at the hearing on May 2, 2018, the hearing is continued to June 6, 2018 at 9:30 a.m.**

**On or before May 16, 2018**, movant must file and serve the motion, notice of the continued hearing, and notice of the deadline to file any response on the co-borrower regarding the secured debt at issue, Mary C. Leos.

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

**Debtor(s):**

Florencio Santana Jr.

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Betty Lena Santana

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10785 Vernon Ascot Properties, LLC**

**Chapter 11**

**#7.00 Motion for relief from stay [AN]**

SAM NOR  
VS  
DEBTOR

Docket 27

**\*\*\* VACATED \*\*\* REASON: Order entered 5/1/18 continuing hearing to  
6/6/18 at 9:30 AM.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vernon Ascot Properties, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

1:30 PM

**1:16-13350 Jorge Paz**

**Chapter 7**

Adv#: 1:17-01015 State Compensation Insurance Fund v. Paz

**#8.00** Status conference re: complaint to determine dischargeability of debt under 11 U.S.C. § 523(a)(2)

fr. 4/19/17; 11/1/17; 11/15/17; 12/13/17; 4/4/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Adversary dismissed 4/11/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jorge Paz

Represented By  
Carlo Reyes

**Defendant(s):**

Jorge Paz

Pro Se

**Plaintiff(s):**

State Compensation Insurance Fund

Represented By  
Rhett Johnson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#9.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
3/22/18 continuing hearing to 6/6/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12592 Tiffany Alexandra Fox**

**Chapter 7**

Adv#: 1:18-01001 Stokes v. Fox

**#10.00** Status conference re: complaint for objection to discharge

fr. 3/28/18

Docket 1

**Tentative Ruling:**

On March 28, 2018, the Court posted its ruling on *Defendant's Motion to Dismiss Complaint in an Adversary Proceeding Pursuant to F.R.C.P. 12(b)(6); F.R.B.P. 7012(b)(6); F.R.C.P. 9(b)* as docket no. 24 (the "Ruling").

On April 10, 2018, the Court entered (1) an *Order Granting in Part and Denying in Part, Plaintiff's Notice of Motion and Motion for Leave to File First Amended Complaint for Objection to Discharge* [doc. 27]; and (2) an *Order Granting in Part and Denying in Part, Defendant's Motion to Dismiss Complaint in an Adversary Proceeding Pursuant to F.R.C.P. 12(b)(6); F.R.B.P. 7012(b)(6); F.R.C.P. 9(b)* [doc. 28] (together, the "Orders").

On April 12, 2018, plaintiff was served with the entered Orders via first class mail [docs. 29, 30]. Pursuant to the Ruling and the Orders, plaintiff was required to file and serve any first amended complaint within 14 days upon entry of the Orders, i.e., April 24, 2018. As of April 30, 2018, plaintiff has not filed and served a first amended complaint.

Because plaintiff received notice of the Orders and has not timely complied with the Ruling or the Orders, the Court will dismiss this adversary proceeding with prejudice.

Defendant must submit the order within seven (7) days.

Note: No court appearance by defendant is required. Should plaintiff appear at the hearing, the Court will determine whether further hearing is required and defendant will be so notified.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Tiffany Alexandra Fox**

**Chapter 7**

**Debtor(s):**

Tiffany Alexandra Fox

Represented By  
Christine A Kingston

**Defendant(s):**

Tiffany A. Fox

Represented By  
Christine A Kingston

**Plaintiff(s):**

Gavin H Stokes

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

#11.00 Defendant's motion to compel production of documents  
by plaintiff Marilyn S. Scheer

fr. 3/28/18

Docket 293

**Tentative Ruling:**

**Tentative Ruling from 3/28/18**

Grant Defendant the State Bar of California's Notice of Motion and Motion to Compel Production of Documents by Plaintiff Marilyn S. Scheer (the "State Bar's Second Motion to Compel"), as set forth below.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "State Bar") alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525(a). On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On December 14, 2017, Plaintiff filed a motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192]. On February 16, 2018, the Court entered an order granting Plaintiff's Motion to Extend (the "February 2018 Scheduling Order") [doc. 273]. Among other things, the February 2018 Scheduling Order set forth procedures for resolving discovery disputes in this adversary proceeding. Thereunder, when a party wishes to move to compel discovery, the moving party is required to transmit a letter via email to the opposing party, requesting documents. The opposing party is then required to send a letter within a two week period responding to the request (but not necessarily providing the requested documents). In the event of the opposing party's failure to respond, or inadequate response, the moving party is permitted to file a motion to compel attaching the discovery letter and response [doc. 273, pp. 2-3]. The Court adopted these procedures to excuse the parties from the meet and confer requirements under LBR 7026-1(c).

On December 7, 2017, the State Bar filed a motion to compel the continued deposition of Plaintiff (the "State Bar's First Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns [doc. 209]. On February 15, 2018, the Court entered a protective order limiting testimony and production of Plaintiff's medical records and tax returns (the "Plaintiff's Protective Order") [doc. 272].

On March 7, 2018 the State Bar filed a second motion to compel production of documents by Plaintiff (the "State Bar's Second Motion to Compel"). In evidence of compliance with the Plaintiff's Protective Order, the Declaration of Marc A. Shapp in support of the Motion [doc. 294] attached a discovery letter sent by email and U.S.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Mail on February 16, 2018 (the "Discovery Letter") [doc. 294, Exh. A], as well as a response letter from Plaintiff sent on March 2, 2018 (the "Response Letter") [doc. 294, Exh. B]. The State Bar seeks to compel production of documents in response to the following requests:

- 1) All documents referring to, relating to, or evidencing, any economic and non-economic harm suffered as a result of the Defendant, or any of its representatives, agents or employees' actions in this adversary proceeding" (document request number two);
- 2) All tax returns from 2009 through 2014, inclusive (encompassed within its document requests five and six);
- 3) All documents evidencing pension or retirement income, including but not limited to government-sponsored programs such as Social Security, as well as any other sources of private retirement income from January 1, 2009 through December 31, 2014 (encompassed within its document requests four and six);
- 4) All documents evidencing disability insurance income from January 1, 2012 through December 31, 2014 (encompassed within its document requests six and eleven);
- 5) All documents relating to Plaintiff's application for or the approval of disability insurance benefits Plaintiff received from January 1, 2012 through December 31, 2014 (encompassed within its document requests six and eleven).

On March 14, 2018, Plaintiff filed an opposition to the State Bar's Second Motion to Compel [doc. 308]. Therein, Plaintiff states that she will not produce her tax returns until the persons identified as "qualified persons" in the Plaintiff's Protective Order send her the non-disclosure agreements required in that order (the "NDAs"). Plaintiff asserts that she has no other documents in her possession responsive to the State Bar's requests.

## **II. DISCUSSION**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

*matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.*

(emphasis added). Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)."

Pursuant to Rule 26(b)(2)(B),

On a motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. Alternatively, the court may impose conditions on such discovery.

Pursuant to Rule 34, a party may serve on any other party a request within the scope of Rule 26(b) to "produce and permit the requesting party or its representative to inspect, copy, test, or sample" items in the "responding party's possession, custody, or control." In response, a party is obligated to produce all specified relevant and nonprivileged documents or other things that are in his or her possession, custody or control. If a party seeking a discovery is dissatisfied with the response, it may seek a court order requiring the responding party to provide an affidavit describing the efforts made to locate the documents. Request for Production of Documents and Things (FRCP 34), Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-C, *citing Buchanan v. Consol. Stores Corp.*, 206 F.R.D. 123, 125 (D. Md. 2002).

The phrase "possession, custody, or control" is disjunctive, and a party need not be in actual possession of a document to be produced. *In re Bankers Trust Co.*, 61 F3d 465,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

469 (6th Cir. 1995), *also see Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995). A legal right, authority, or practical ability to obtain documents on demand constitutes "control" for purposes of FRCP 34(a)(1). *United States v. International Union of Petroleum & Industrial Workers AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989), *see In re Legato Systems, Inc. Secur. Litig.*, 204 FRD 167, 169 (N.D. Cal. 2001) (party entitled to obtain a transcript of his testimony before SEC was in "control" thereof and must obtain and produce it in response to Rule 34 request).

Pursuant to Rule 37—

(a) Motion for an Order Compelling Disclosure or Discovery

(1) *In General*. On notice to other parties and affected person, a party may move for an order compelling disclosure or discovery. The motion must include certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

...

(3) *Specific Motions*

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

- iii. a party fails to answer an interrogatory submitted under Rule 33; or
- iv. a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

(4) *Evasive or Incomplete Disclosure, Answer, or Response.*  
For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

Federal courts generally recognize a right of privacy that can be raised in response to discovery requests. *Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992). However, unlike a privilege, the right of privacy is not an absolute bar to discovery. Courts balance the need for the information against the claimed privacy right under the following factors:

(1) the type of information requested, (2) the potential for harm in any subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized disclosure, (4) the degree of need for access, and (5) whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

*See Seaton v. Mayberg*, 610 F.3d 530, 539, 541, fn. 47 (9th Cir. 2010), *citing Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004).

### **III. THE STATE BAR'S DOCUMENT REQUESTS**

1) *All documents referring to, relating to, or evidencing, any economic and non-economic harm suffered as a result of the Defendant, or any of its representatives, agents or employees' actions in this adversary proceeding" (relating to its document request number two)*

The State Bar asserts that Plaintiff has previously withheld documents responsive to this request for want of a protective order. Now, it argues, that the Court has issued the Plaintiff's Protective Order, Plaintiff no longer has a stated basis for withholding such responsive documents. The Response Letter indicates that Plaintiff plans to respond to this request by producing her tax returns. The State Bar believes that Plaintiff has possession or control of more documents responsive to the request. Because the State Bar cannot determine the completeness of Plaintiff's production until it is made, it requests that the Court issue an order requiring Plaintiff to make

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

such production within 10 days of entry of the order.

Plaintiff has stated that she will not produce documents responsive to this request until she receives the NDAs. This is in accordance with the text of the Plaintiff's Protective Order. Thereunder, "prior to receiving" any confidential documents, including tax returns, each person qualified to receive the confidential documents was required to "execute a nondisclosure agreement" a copy of which is required to be "immediately provided to Plaintiff" [doc. 272, p. 3]. As of the date the Opposition was filed, Plaintiff had not yet received the NDAs signed by the State Bar's attorneys in compliance with the Plaintiff's Protective Order.

Plaintiff has indicated that she is in possession of documents responsive to this request [doc. 29, Exh. D, pp. 11-12]. In response to a Rule 34 demand, a party must produce documents that are in their possession, custody or control. Once Plaintiff receives the signed NDAs she will no longer have a stated reason for withholding the documents. Consequently, the Court will grant the Motion as to this request, conditioned on Plaintiff's prior receipt of the NDAs.

- 2) *All tax returns from 2009 through 2014, inclusive (relating to its document requests five and six)*

Plaintiff's response to the discovery letter states that she will provide those tax returns that she "can locate." The State Bar argues that this is not sufficient as a matter of law. The State Bar requests that the Court enter an order requiring Plaintiff to produce tax returns for the years between 2009 and 2014 no more than 10 days from the entry of the order. To the extent that Plaintiff cannot locate tax returns for the relevant period, the State Bar requests that the Court require Plaintiff to obtain transcripts from the IRS and produce them to the State Bar within 30 days of the entry of the order.

Under Rule 34, Plaintiff must produce documents that are in her possession, custody or control. The rule does not condition the requirement to produce on the producing party's possession of the document, and the fact that a party does not have possession of the document does not absolve them of the requirement to produce it. Although Plaintiff may not be in possession of her tax returns, as the State Bar points out, the IRS provides a convenient means of obtaining tax return transcripts from prior years for free. Thus, Plaintiff is in "control" of her tax return transcripts, and must produce



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

them. Accordingly, the Court will grant the Motion as to this request, conditioned on Plaintiff's prior receipt of the NDAs.

- 3) *All documents evidencing pension or retirement income, including but not limited to government-sponsored programs such as Social Security, as well as any other sources of private retirement income from January 1, 2009 through December 31 2014 (relating to its document requests four and six)*

a) *Relevance*

In the Response Letter, Plaintiff objects to this request as irrelevant. She argues that information about her retirement income is irrelevant because the issue is what she could have earned if her license was reinstated, and she has already established that she was indigent during the relevant period. The State Bar argues that the requested documents are relevant because they contain information about her finances during the time period for which her involuntary inactive enrollment overlapped with her bankruptcy case. This information will help determine the nature and extent of the injury Plaintiff suffered.

Plaintiff seeks relief in part in the form of payment for actual damages to compensate her for her loss of income and "loss of livelihood." In order to determine what Plaintiff's loss of income was, the parties must present information about Plaintiff's earnings during the relevant period. The Court will overrule Plaintiff's relevance objection.

b) *Invasion of Privacy*

Plaintiff asserts that this request violates her right to privacy under Article I of the California Constitution, the Plaintiff's Protective Order and federal law.

Pursuant to Federal Rule of Evidence ("FRE") 501, testimonial privileges in federal question cases are governed by federal common law. A federal question case is one that arises under federal law. 28 U.S.C. § 1331 (giving district courts original jurisdiction over all civil actions arising under federal law). The FAC alleges violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525(a). Because these are federal bankruptcy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

law statutory provisions, the case presents federal questions under 28 U.S.C. § 1331. Consequently, Plaintiff's reliance on the California Constitution's privacy protections is misplaced.

Plaintiff cites to the Supreme Court of the United States' decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965), in support of her argument regarding a fundamental federal right to privacy. Plaintiff is correct that federal courts have recognized a right to privacy in connection with discovery, and that "fishing" for evidence is not encouraged. However, the State Bar has articulated a specific need for the financial information it seeks, and outlined how that information is relevant to the damages calculation in this proceeding. In addition, Plaintiff does not articulate specific reasons she believes that disclosure of information regarding social security or retirement income would be harmful to her. Consequently, the Court will overrule Plaintiff's objection based on privacy.

*c) Plaintiff's Control Over Relevant Documents*

The State Bar also argues that Plaintiff has an affirmative obligation to obtain her financial records from third parties, even if she does not currently possess them. As with Plaintiff's tax returns, the State Bar requests that the Court compel Plaintiff to produce all of her financial statements for the requested period not later than 10 days after the entry of the order to compel, and, to the extent that she fails to locate the responsive documents, to obtain them from her bank or banks and produce them to the State Bar within 30 days of entry of the order.

As discussed above, Plaintiff has "control" of any documents which she can obtain upon request. To the extent that the State Bar seeks documents such as bank records regarding private retirement plans, Plaintiff can request those from her bank or banks and has the requisite "control" giving rise to a production obligation under Rule 34. In addition, as with her tax return transcripts and her bank records, Plaintiff has an obligation to obtain her records from the Social Security Administration (the "SSA"), which, as noted by the State Bar, is a service that the SSA provides for free. Consequently, Plaintiff must produce those documents related to this request that she can access, not only the ones currently in her possession. The Court will grant the Motion as to this request, conditioned on the Plaintiff first receiving the NDAs.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

- 4) *All documents evidencing disability insurance income from January 1, 2012 through December 31, 2014, and all documents relating to Plaintiff's application for or the approval of disability insurance benefits Plaintiff received (relating to its document requests six and eleven).*

In the Response Letter, Plaintiff states that she was receiving food stamps, and then in 2013 she began receiving Social Security Disability payments, and stopped receiving food stamps. She states that she no longer has her application for social security benefits or any other records responsive to these requests. Plaintiff asserts that the information responsive to this request would be included on her tax returns.

The State Bar contends that Plaintiff's response is insufficient. The State Bar requires more information regarding the basis for Plaintiff's qualification for disability insurance, not just the amount she received, in order to craft its arguments regarding her loss of livelihood damages. In addition, the State Bar plans to make arguments based on the U.S. Social Security Administration's provision of disability insurance to Plaintiff, and it will need evidence to support those arguments.

As discussed above, Plaintiff has control of the information about her disability insurance available to her through the SSA, and therefore has an obligation to produce it. Consequently, the Court will grant the Motion as to these requests as well.

#### **IV. CONCLUSION**

The Court will grant the State Bar's Second Motion to Compel as to document request numbers two, four, five, six, and eleven, conditioned on the Plaintiff first receiving the NDAs.

The State Bar must submit the order within seven (7) days.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#12.00** Defendants motion to amend the February 15, 2018 protective order limiting testimony and production of plaintiffs medical records and tax returns

fr. 3/28/18

Docket 299

**Tentative Ruling:**

**Tentative Ruling from 3/28/18**

The Court will grant the *Motion to Amend the February 15, 2018 Protective Order Limiting Testimony and Production of Plaintiff's Medical Records and Tax Returns* (the "Motion") [doc. 299], filed by the State Bar of California (the "State Bar"), as set forth below.

**I. SERVICE**

The State Bar filed and served the Motion on March 7, 2018, only 21 days before the hearing, which is allowable under LBR 9013-1(d)(2). Marilyn S. Scheer ("Plaintiff") asserts that she was served on March 8, 2018, and therefore she objects to the untimely served motion. However, since Plaintiff had notice of the motion, and timely served a response, the one-day delay does not appear to have caused her harm.

**II. BACKGROUND**

On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns [doc. 209]. On February 15, 2018, the Court entered a protective order limiting testimony and production of Plaintiff's medical records and tax returns (the "Plaintiff's Protective Order") [doc. 272].

On March 7, 2018, the State Bar filed the Motion [doc. 299]. The Motion requested that the Court amend the Plaintiff's Protective Order to include Vanessa Holton, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

State Bar General Counsel, as a "qualified person" under the Order. On March 21, 2018, the State Bar filed a statement of its procedures for settlement claims (the "Settlement Procedures") [doc. 321]. Therein, the State Bar explained that its General Counsel may authorize the settlement of claims that do not implicate a material policy issue up to \$25,000. In addition, the State Bar's General Counsel normally obtains settlement authority from the Board of Trustees in the event that the settlement amount in question exceeds \$25,000.

On March 14, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 307]. Plaintiff also argues that the State Bar never mentioned Vanessa Holton in discussions regarding the Plaintiff's Protective Order or at any time earlier in this proceeding.

**III. DISCUSSION**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added). Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Under Rule 26(c)(1)—

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004). Furthermore, courts have "broad authority to fashion a protective order that serves the interests of the parties and the administration of justice." *Sony Computer Entm't Am., Inc. v. NASA Elecs. Corp.*, 249 F.R.D. 378, 381 (S.D. Fla. 2008).

The Settlement Procedures indicate that as the State Bar's General Counsel, Ms. Holton has authority regarding any settlement discussions in this case. Accordingly, it appears appropriate that she have access to the pertinent discovery documents, so that she can make informed decisions regarding any settlement discussions. This Court has broad authority to fashion a protective order that serves the interests of the parties. Plaintiff has asserted that it is in her interest to settle this dispute. It therefore appears to be in Plaintiff's interest to allow Ms. Holton to be included in the Plaintiff's Protective Order as a qualified person.

**IV. CONCLUSION**

The Court will grant the Motion.

The State Bar must submit the order within seven (7) days.

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#13.00** Motion to compel release of information held by the social security administration regarding plaintiff Marilyn S. Scheer

Docket 323

**Tentative Ruling:**

Grant *Defendant the State Bar of California's Notice of Motion and Motion to Compel Release of Information Held by the Social Security Administration Regarding Plaintiff Marilyn S. Scheer* ("Defendant's Third Motion to Compel") [doc. 323], as set forth below.

Deny *Plaintiff's Notice of Motion and Motion for Protective Order to Limit Discovery and Disclosure of Medical Records and Materials involving Disability Benefits* ("Plaintiff's Second Motion for Protective Order") [doc. 335], as set forth below.

**I. BACKGROUND**

On July 12, 2013, Marilyn S. Scheer ("Plaintiff") filed a voluntary chapter 7 petition. On November 1, 2013, Plaintiff filed a complaint against the State Bar of California (the "Defendant"), Luis J. Rodriguez, Joseph Dunn, Joanna Remke and Kenneth E. Bacon ("Defendants"), alleging violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525 (a).

On November 28, 2016, Plaintiff filed the first amended complaint (the "FAC") [doc. 95]. This time, Plaintiff named only Defendant, Mr. Dunn and Mr. Bacon. The Court subsequently dismissed the claims against Mr. Dunn and Mr. Bacon [doc. 118]. In relevant part, the FAC alleges:

The State Bar's refusal to lift Plaintiff's involuntary inactive enrollment was a violation of the automatic stay under 11 U.S.C. § 362 and constituted discriminatory treatment under 11 U.S.C. § 525.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

Plaintiff requests damages for her loss of livelihood from July 12, 2013 through July 16, 2014. Plaintiff also requests costs of suit, including attorneys' fees, interest and other relief as the Court deems appropriate.

On May 10, 2017, the State Bar filed an answer to the FAC (the "Answer") [doc. 125]. In the Answer, the State Bar denied all relevant allegations in the FAC and asserted six affirmative defenses: (A) failure to state a claim; (B) Plaintiff's damages were caused in whole or in part by Plaintiff's own actions; (C) Plaintiff's damages were caused in whole or in part by third parties; (D) failure to mitigate losses; (E) the State Bar was not the cause of any losses alleged by Plaintiff; and (F) the Court lacks subject matter jurisdiction.

On December 14, 2017, Plaintiff filed a motion to extend deadlines ("Plaintiff's Motion to Extend") [doc. 192]. On February 16, 2018, the Court entered an order granting Plaintiff's Motion to Extend (the "February 2018 Scheduling Order") [doc. 273].

The February 2018 Scheduling Order also set forth procedures for resolving discovery disputes in this adversary proceeding. Thereunder, when a party wishes to move to compel discovery, the moving party is required to transmit a letter via email to the opposing party, requesting documents. The opposing party is then required to send a letter within a two week period responding to the request (but not necessarily providing the requested documents). In the event of the opposing party's failure to respond, or inadequate response, the moving party is permitted to file a motion to compel attaching the discovery letter and response [doc. 273, pp. 2-3]. The Court adopted these procedures to excuse the parties from the meet and confer requirements under LBR 7026-1(c).

On December 7, 2017, Defendant filed a motion to compel the continued deposition of Plaintiff (the "Defendant's First Motion to Compel") [doc. 181], asserting that Plaintiff refused to answer questions regarding her law practice. On December 15, 2017, Plaintiff filed a motion for a protective order requesting the Court prohibit the State Bar from questioning Plaintiff about her law practice (the "Motion for Deposition Order") [doc. 194].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

On January 4, 2018, Plaintiff filed a motion for a protective order requesting the Court seal Plaintiff's medical records and tax returns [doc. 209]. On February 15, 2018, the Court entered a protective order limiting testimony and production of Plaintiff's medical records and tax returns (the "Plaintiff's Protective Order") [doc. 272].

On January 11, 2018, Defendant filed seven motions in limine (the "Defendant's Motions in Limine") [doc. 213], asking the Court to prevent Plaintiff from introducing evidence of damages at trial. On January 17, 2018, Defendant filed a protective order (the "Defendant's Motion for Global Protective Order") [doc. 225], requesting a global protective order to govern this adversary proceeding. On February 26, 2018, the Court entered orders denying Defendant's Motions in Limine [doc. 285] and Defendant's Motion for Global Protective Order [doc. 286].

On March 7, 2018 Defendant filed a second motion to compel production of documents by Plaintiff (the "Defendant's Second Motion to Compel"). On March 28, 2018, the Court continued the hearing on Defendant's Second Motion to Compel until May 2, 2018 at 2:30 p.m., matter #11.

On March 26, 2018, Defendant filed a third motion to compel the release of information held by the Social Security Administration regarding Plaintiff Marilyn S. Scheer (the "Defendant's Third Motion to Compel") [doc. 323]. In evidence of compliance with Plaintiff's Protective Order, the Declaration of Marc A. Shapp in support of the Motion [doc. 324] attached a discovery letter sent by email and U.S. Mail on February 23, 2018 (the "Discovery Letter") [doc. 324, Exh. B], as well as a response letter from Plaintiff sent on March 2, 2018 (the "Response Letter") [doc. 324, Exh. C].

On April 17, 2018, Plaintiff filed an opposition to Defendant's Third Motion to Compel [doc. 338]. Therein, Plaintiff states that the information Defendant seeks is irrelevant and overly broad. Plaintiff asserts that the discovery of information regarding her medical records and disability benefits should be limited to the year 2013 to 2014.

On April 11, 2018, Plaintiff filed Plaintiff's Second Motion for Protective Order. On April 18, 2018, Defendant filed an opposition to Plaintiff's Second Motion for Protective Order [doc. 339]. Therein, Defendant objects to Plaintiff's Second Motion

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

2:30 PM

CONT... Marilyn S. Scheer

Chapter 7

for Protective Order because it will prevent Defendant from obtaining information highly relevant to Plaintiff's damages claim. Plaintiff informed Defendant that she applied for disability benefits in December 2012 and began receiving benefits in late 2013. Thus, the proposed timeframe would prohibit Defendant from accessing Plaintiff's disability application entirely.

## II. DISCUSSION

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added). Pursuant to Rule 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)."

Pursuant to Rule 26(b)(2)(B),

On a motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. Alternatively, the court may impose conditions on such discovery.

Pursuant to Rule 34, a party may serve on any other party a request within the scope of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

Rule 26(b) to "produce and permit the requesting party or its representative to inspect, copy, test, or sample" items in the "responding party's possession, custody, or control." In response, a party is obligated to produce all specified relevant and nonprivileged documents or other things that are in his or her possession, custody or control. If a party seeking a discovery is dissatisfied with the response, it may seek a court order requiring the responding party to provide an affidavit describing the efforts made to locate the documents. Request for Production of Documents and Things (FRCP 34), Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-C, *citing Buchanan v. Consol. Stores Corp.*, 206 F.R.D. 123, 125 (D. Md. 2002).

The phrase "possession, custody, or control" is disjunctive and a party need not be in actual possession of a document to be produced. *In re Bankers Trust Co.*, 61 F3d 465, 469 (6th Cir. 1995), *also see Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995). A legal right, authority, or practical ability to obtain documents on demand constitutes "control" for purposes of FRCP 34(a)(1). *United States v. International Union of Petroleum & Industrial Workers AFL-CIO*, 870 F2d 1450, 1452 (9th Cir. 1989), *see In re Legato Systems, Inc. Secur. Litig.*, 204 FRD 167, 169 (N.D. Cal. 2001) (party entitled to obtain a transcript of his testimony before SEC was in "control" thereof and must obtain and produce it in response to Rule 34 request).

Pursuant to Rule 37—

(a) Motion for an Order Compelling Disclosure or Discovery

(1) *In General*. On notice to other parties and affected person, a party may move for an order compelling disclosure or discovery. The motion must include certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

...

(3) *Specific Motions*

(A) *To Compel Disclosure*. If a party fails to make a disclosure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

- iii. a party fails to answer an interrogatory submitted under Rule 33; or
- iv. a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.*

For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

Federal courts generally recognize a right of privacy that can be raised in response to discovery requests. *Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992). However, unlike a privilege, the right of privacy is not an absolute bar to discovery. Courts balance the need for the information against the claimed privacy right under the following factors:

- (1) the type of information requested, (2) the potential for harm in any subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized disclosure, (4) the degree of need for access, and (5) whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

*See Seaton v. Mayberg*, 610 F.3d 530, 539, 541, fn. 47 (9th Cir. 2010), *citing Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004).

### III. THE DEFENDANT'S THIRD MOTION TO COMPEL

In 2013, Plaintiff began receiving Social Security Disability payments, which she

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Marilyn S. Scheer**

**Chapter 7**

applied for in December 2012 [doc. 294, Exh. B at p. 5]. Plaintiff states that she no longer has her application for social security benefits. Plaintiff asserts that discovery and disclosure of her medical records and information regarding disability benefits should be limited to the year 2013 to 2014. Plaintiff asserts that the information responsive to this request would be included on her tax returns, which she already provided to Defendant.

Defendant contends that Plaintiff's response is insufficient. Defendant requires more information regarding the basis for Plaintiff's qualification for disability insurance, not just the amount she received, in order to craft its arguments regarding her loss of livelihood damages. In addition, Defendant plans to make arguments based on the fact that the SSA provided the disability insurance, and will need evidence to support those arguments.

a) *Relevance*

Plaintiff objects to this request as irrelevant. She argues that information regarding the disability benefits she received from the SSA should be limited to the year 2013 to 2014 because the issue is what she could have earned if her license was reinstated. Defendant argues that the requested documents are relevant to Plaintiff's damages claim.

Plaintiff seeks relief in part in the form of payment for actual damages to compensate her for her loss of income and "loss of livelihood." In order to determine what Plaintiff's loss of income was, the parties must present information about Plaintiff's potential earnings during the relevant period. This information will help determine the nature and extent of the injury Plaintiff suffered. The Court will overrule Plaintiff's relevance objection.

b) *Invasion of Privacy*

Plaintiff asserts that this request violates her right to privacy under Article I of the California Constitution, Plaintiff's Protective Order and federal law.

Pursuant to Federal Rule of Evidence ("FRE") 501, testimonial privileges in federal question cases are governed by federal common law. A federal question case is one

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Marilyn S. Scheer**

**Chapter 7**

that arises under federal law. 28 U.S.C. § 1331 (giving district courts original jurisdiction over all civil actions arising under federal law). The FAC alleges violation of the automatic stay and the discharge injunction under 11 U.S.C. §§ 362 and 524 and discriminatory treatment under § 525(a). Because these are federal bankruptcy law statutory provisions, the case presents federal questions under 28 U.S.C. § 1331. Consequently, Plaintiff's reliance on the California Constitution's privacy protections is misplaced.

Plaintiff cites to the Supreme Court of the United States' decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965), in support of her argument regarding a fundamental federal right to privacy. Plaintiff is correct that federal courts have recognized a right to privacy in connection with discovery, and that "fishing" for evidence is not encouraged. However, Defendant has articulated a specific need for the information it seeks, and outlined how it is relevant to the damages calculation in this proceeding. In addition, Plaintiff does not articulate specific reasons she believes that disclosure of this information would be harmful to her, or why Defendant's Proposed Protective Order, which is identical to the February 2018 Protective Order, will not sufficiently protect this information. Consequently, the Court will overrule Plaintiff's objection based on privacy.

*c) Collateral Source Rule*

Plaintiff argues that the collateral source rule prohibits the use of her disability payments at trial. Plaintiff cites to the Supreme Court of the United States' decision in *Eichel v. New York Cent RR Co.*, 375 U.S. 253 (1965), in support of her argument regarding the exclusion of evidence of disability benefits.

"Under the collateral source rule, 'benefits received by the plaintiff from a source collateral to the defendant may not be used to reduce that defendant's liability for damages.'" *McLean v. Runyon*, 222 F.3d 1150, 1155–56 (9th Cir. 2000) (citing 1 dan B. Dobbs, *Law Of Remedies* § 3.8(1) at 372–73 (2d ed.1993)). "The primary justifications for the collateral source rule are that the defendant should not get a windfall for collateral benefits received by the plaintiff and that the defendant should not profit from benefits that the plaintiff has paid for himself." *Id.* at 1156.

Here, Defendant seeks evidence regarding Plaintiff's disability application and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

benefits in order to determine the nature and extent of the injury Plaintiff suffered. This information is relevant to Plaintiff's entitlement to damages and her claim of "loss of livelihood."

Even if the collateral source rule did bar introduction of evidence at trial of Plaintiff's disability benefits, and the justification she used for their receipt, pursuant to Rule 26 (b)(1), information sought during discovery need not be admissible in evidence to be discoverable.

Plaintiff has an obligation to obtain her records from the SSA. Defendant provided Plaintiff with a consent form that she needs to sign in order for Defendant to obtain the information from the SSA. Consequently, the Court will grant the Motion as to the request to order Plaintiff to sign a consent form.

However, the consent form Defendant provided to Plaintiff requests information dating back to January 1, 2011 [doc. 324, Exh. B]. Plaintiff states that she applied for disability benefits in December 2012. Defendant may request information from the SSA from January 2012 to August 2014. Defendant will need to provide a new consent form to Plaintiff with these dates.

**IV. THE DEFENDANT'S PROPOSED PROTECTIVE ORDER**

Both parties agree that a protective order is appropriate to govern the use and disclosure of information related to Plaintiff's disability benefits. Thus, it appears there is good cause to enter a protective order. Defendant's Proposed Protective Order is identical to the February 2018 Protective Order, except in respect to what information it governs. The Court will enter Defendant's Proposed Protective Order.

**V. THE PLAINTIFF'S SECOND MOTION FOR PROTECTIVE ORDER**

For the reasons stated above, the Court will deny Plaintiff's Second Motion for Protective Order.

**VI. CONCLUSION**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

The Court will grant Defendant's Third Motion to Compel. However, Defendant may request information from the SSA from January 2012 to August 2014.  
The Court will deny Plaintiff's Second Motion for Protective Order.

Defendant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#14.00** Plaintiff's motion for protective order to limit discovery and disclosure of medical records and materials involving disability benefits.

Docket 335

**Tentative Ruling:**

See calendar no. 13.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Richard J Zanassi

Pro Se

Tracey L McCormick

Pro Se

Daniel A Lee

Pro Se

Starr Babcock

Pro Se

Thomas A Miller

Pro Se

Lawrence Yee

Pro Se

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

**#15.00** Plaintiff's motion for entry of an order dismissing the eighth, ninth, tenth and eleventh claims for relief in the complaint as against defendant/debtor Hermann Muennichow only, including claims for relief seeking to deny the debtor's discharge

Docket 35

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

Helayne Muennichow

Represented By  
Gary A Kurtz

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan  
Reagan E Boyce

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#16.00** Plaintiff's application for appointment of counsel (U.S.C. 1915(e)(1))

Docket 34

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

**A. Plaintiff's Chapter 7 Case**

On June 30, 2017, Steven Mark Rosenberg ("Plaintiff") filed his voluntary chapter 7 petition. In his chapter 7 case, Plaintiff was represented by Charles Shamash. Plaintiff's bankruptcy case docket indicates that a \$335 chapter 7 petition filing fee was paid [1:17-bk-11748-VK, doc. 1]. The bankruptcy case docket does not indicate that Plaintiff sought a waiver of the filing fee, or that Plaintiff requested to pay the filing fee in installments. On October 10, 2017, Plaintiff received his chapter 7 discharge [1:17-bk-11748-VK, doc. 21]. On March 15, 2018, Plaintiff's chapter 7 case was closed [1:17-bk-11748-VK, doc. 32].

**B. The Adversary Complaint**

On November 27, 2017, Debtor filed an adversary complaint ("Complaint") against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, Inc. ("Ocwen"), Alliance Bancorp, Inc. ("Alliance"), Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc. ("MERS"), One West Bank ("One West"), and Does 1-25. The 27-page Complaint alleges causes of action for violation of 11 U.S.C. § 524(a), violation of Federal Rule of Bankruptcy Procedure 3001(c)(2)(B) and (C), fraudulent concealment, violation of 18 U.S.C. § 157 and declaratory relief, and demands a jury trial. In the Complaint, Plaintiff alleges that a deed of trust was forged and that subsequent assignments of that deed of trust are void.

On January 23, 2018, Plaintiff voluntarily dismissed the Complaint with respect to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

Defendants CIT Bank (f.k.a. One West Bank, erroneously sued as One West Bank) and Alliance [doc. 13]. That dismissal left Deutsche Bank, MERS and Ocwen ("Defendants") as the remaining defendants in this action.

***C. Motion for Judgment on the Pleadings***

On February 13, 2018, Ocwen and MERS filed a motion for judgement on the pleadings (the "Motion for Judgment on the Pleadings") [doc. 16]. On March 9, 2018, Deutsche Bank, the current beneficiary of the loan secured by the deed of trust at issue, filed a joinder in the Motion for Judgment on the Pleadings [doc. 24]. On March 21, 2018, Plaintiff filed an opposition to the Motion for Judgment on the Pleadings. On March 28, 2018, Defendants filed a reply [doc. 32].

On April 18, 2018, the Court held a hearing on the Motion for Judgment on the Pleadings. Prior to the hearing, the Court had issued a tentative ruling to grant the Motion for Judgment on the Pleadings, without leave to amend. Plaintiff appeared and asked the Court to consider his application for appointment of counsel (the "Application") [doc. 34] before entering a final ruling on the Motion for Judgment on the Pleadings. The Court continued the hearing on the Motion for Judgment on the Pleadings to May 2, 2018, to coincide with the hearing on the Application.

***D. Plaintiff's Chapter 13 Case***

On March 31, 2018, Plaintiff filed a voluntary chapter 13 petition, commencing case no. 1:18-bk-10546-MT. Plaintiff's chapter 13 bankruptcy docket indicates that he is represented by Michael Jay Berger, and that a \$310 chapter 13 petition filing fee was paid [1:18-bk-10546-MT, doc. 1]. The chapter 13 bankruptcy docket does not indicate that Plaintiff requested to pay the filing fee in installments.

In his chapter 13 schedules I and J, Plaintiff indicates that his monthly income is \$2,722.51 and his monthly expenses are \$2,171.00, leaving \$551.51 in net monthly income [1:18-bk-10546-MT, doc. 12, at p. 25.] In his chapter 13 plan, Plaintiff proposes to pay \$550 per month in plan payments for the 60-month duration of the plan [1:18-bk-10546-MT, doc. 15, at p. 2].

***E. Application for Appointment of Counsel***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... **Steven Mark Rosenberg**

Chapter 7

On April 4, 2018, Plaintiff filed the Application, seeking appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1). In the Application, Plaintiff asks the Court to appoint counsel to assist him with his adversary proceeding. Plaintiff states that he is indigent and cannot afford to hire counsel. (Declaration of Steven Mark Rosenberg, ¶ 3.) Plaintiff's only income is from his pension, and he has no legal training or expertise. (*Id.*, ¶¶ 4–5.) He has contacted at least six attorneys, but none would assist him with the pending case for a fee that he could afford. (*Id.*, ¶¶ 6–7.) Plaintiff argues that the appointment of counsel would expedite the resolution of his case and give him a chance for a fair hearing. Plaintiff states his legal proceedings over the years have cost him "thousands of dollars." (*Id.*, ¶ 14.)

On April 19, 2018, Deutsche Bank filed an amended opposition to the Application [doc. 37]. Deutsche Bank argues that 28 U.S.C. § 1915 does not apply to bankruptcy courts. Plaintiff has not applied for leave to proceed *in forma pauperis* in his recent chapter 13 case. Nor Plaintiff established a basis for appointment of counsel under 28 U.S.C. § 1915, which applies only to parties proceeding *in forma pauperis*. Furthermore, Plaintiff's claims for relief are time-barred and meritless. As such, Plaintiff cannot establish the likelihood of success required for the appointment of counsel in a civil case.

On April 26, 2018, Plaintiff filed an affidavit reply [doc. 39]. Plaintiff states that he receives "\$2,765 as income" from his pension, which is insufficient to hire counsel. Plaintiff asks the Court to consider his age and health as factors supporting appointment of counsel. Plaintiff states that he spends money only on necessities and not on luxury items. Plaintiff argues that a party need not be absolutely destitute to obtain leave to proceed *in forma pauperis* under 28 U.S.C. § 1915.

## II. DISCUSSION

28 U.S.C. § 1915 provides, in relevant part:

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such *prisoner* possesses that the person is unable to pay such fees or give security therefor.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Steven Mark Rosenberg**

**Chapter 7**

Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A *prisoner* seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the *prisoner* for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the *prisoner* is or was confined.

...

(b)(1) Notwithstanding subsection (a), if a *prisoner* brings a civil action or files an appeal *in forma pauperis*, the *prisoner* shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the *prisoner's* account; or

(B) the average monthly balance in the *prisoner's* account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the *prisoner* shall be required to make monthly payments of 20 percent of the preceding month's income credited to the *prisoner's* account. The agency having custody of the *prisoner* shall forward payments from the *prisoner's* account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a *prisoner* be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the *prisoner* has no assets and no means by which to pay the initial partial

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Steven Mark Rosenberg**  
filing fee.

**Chapter 7**

. . .

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal-

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

"[T]he appointment of counsel in a civil case is, as is the privilege of proceeding *in forma pauperis*, a matter within the discretion of the district court. It is a privilege and not a right." *U.S. ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965). A "court abuses its discretion if it fails to rule upon a motion for appointment of counsel before granting a motion of the defendant disposing of the case." *Johnson v. U.S. Dep't of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991).

"A motion for appointment of counsel under 28 U.S.C. § 1915 is addressed to the sound discretion of the trial court and is granted only in exceptional circumstances." *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984).

A finding of exceptional circumstances requires an evaluation of both "the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.1983) . . . . Neither of these factors is dispositive and both must be viewed together before reaching a decision on request of counsel under section 1915(d) [predecessor statute to section 1915(e)(1)].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

*Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

**A. Applicability of 28 U.S.C. § 1915 to the Pending Bankruptcy Adversary Proceeding**

A review of the language of 28 U.S.C. § 1915 shows that the statute refers specifically to a "prisoner" requesting to proceed *in forma pauperis* in a "court of the United States[.]" Here, Plaintiff is not incarcerated. However, section 1915(e)(1) authorizes a court of the United States to request an attorney to represent "**any person** unable to afford counsel." (emphasis added).

In *Perroton v. Gray (In re Gray)*, 958 F.2d 889 (9th Cir. 1992), the Ninth Circuit Court of Appeals held that "because [a] bankruptcy court is not a 'court of the United States' under the definition of that phrase contained in [28 U.S.C.] § 451 and does not have the authority to waive fees under [28 U.S.C.] § 1915(a)," the Ninth Circuit Bankruptcy Appellate Panel appropriately dismissed the debtor's appeal for failure to pay the filing fee. *Id.* at 896.

*Perroton* concerned a debtor's failure to pay required filing fees for prosecuting an appeal with the Bankruptcy Appellate Panel, and the denial of his motion to proceed *in forma pauperis*. Here, Plaintiff does not appear to be seeking leave to proceed *in forma pauperis*. Rather, Plaintiff argues that his indigence and inability to obtain counsel warrant the appointment of counsel by the Court to represent him in the pending adversary proceeding.

**B. Appointment of Counsel**

As an initial matter, 28 U.S.C. § 1915(e)(1) provides that "[t]he court may request an attorney to represent any person unable to afford counsel[.]" "Section 1915 does not authorize the expenditure of federal funds to appoint counsel, and it does not authorize a court to order an unwilling lawyer to represent an indigent. The statute simply authorizes the court to **request** a lawyer to represent an indigent." *In re Fitzgerald*, 167 B.R. 689, 692 n.2 (Bankr. N.D. Ga. 1994) (emphasis in original). Accordingly, even if this Court were to make such a request, the Court cannot order an attorney to represent Plaintiff or authorize payment of such counsel from federal funds.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

Plaintiff's allegations regarding his indigence are inconsistent with his filings in this Court. Plaintiff alleges that he has limited income of \$2,765.00, presumably per month, from his pension. Plaintiff alleges that his expenses consist of necessities and not luxuries. Plaintiff alleges that he has contacted several attorneys to represent him in this case, but he cannot afford to pay the fees they charge. However, in his chapter 7 case, Plaintiff retained counsel and a filing fee of \$335 was paid for filing his chapter 7 petition. Plaintiff did not request a waiver of the filing fee, or request to pay the filing fee in installments. In his chapter 13 case, Plaintiff also retained counsel and a filing fee of \$310 was paid for filing his chapter 13 petition. Plaintiff did not request to pay the filing fee in installments. Plaintiff's income may be limited, but his income is regular and provides him with sufficient funds to pay \$550 per month in chapter 13 plan payments.

Even assuming that this Court has the authority to appoint counsel pursuant to 28 U.S.C. § 1915(e)(1), and that Plaintiff is indigent, it does not appear that there are exceptional circumstances here that warrant such relief. As for Plaintiff's ability to articulate his claims *pro se*, the legal issues involved in Plaintiff's adversary proceeding are not complex. At its heart, the Complaint involves allegations of fraudulent conduct by various lending institutions regarding a deed of trust and several assignments of that deed of trust. Plaintiff was able to articulate his claims in the 27-page Complaint, cite legal authority, and attach supporting exhibits to the Complaint. In the pending Application, Plaintiff was able to cite case authority regarding the appointment of counsel in civil cases.

As for Plaintiff's likelihood of success on the merits, the Court has issued a tentative ruling granting the Motion for Judgment on the Pleadings without leave to amend. Accordingly, it does not appear that there is a likelihood of success on the merits that would warrant the appointment of counsel in the pending adversary proceeding.

### **III. CONCLUSION**

In light of the foregoing, the Court will deny the Application.

Deutsche Bank must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Tomas A Ortiz

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

**Movant(s):**

Steven Mark Rosenberg

Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#17.00** Defendant's motion for judgment on the pleadings

fr. 4/4/18; 4/18/18

Docket 16

**Tentative Ruling:**

**Tentative Ruling from 4/18/18**

**I. BACKGROUND**

On June 30, 2017, Steven Mark Rosenberg ("Plaintiff") filed his voluntary chapter 7 petition. On October 10, 2017, Plaintiff received his chapter 7 discharge [1:17-bk-11748-VK, doc. 21]. On November 27, 2017, Debtor filed an adversary complaint ("Complaint") against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, Inc. ("Ocwen"), Alliance Bancorp, Inc. ("Alliance"), Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc. ("MERS"), One West Bank ("One West"), and Does 1-25.

The Complaint alleges causes of action for violation of 11 U.S.C. § 524(a), violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(B) and (C), fraudulent concealment, violation of 18 U.S.C. § 157 and declaratory relief, and demands a jury trial. The Complaint bases these claims on the following facts:

Plaintiff is the sole beneficiary of the Isadore and Norma P. Rosenberg Trust, and a personal representative of the Estate of Isadore Rosenberg, who passed away in 2008. Complaint, ¶ 8.

On March 15, 2007 an alleged deed of trust (the "DOT") securing a \$390,000 promissory note was recorded against real property owned by Isadore Rosenberg located at 15814 Septo Street, North Hills, CA 91343 (the "Property"). The DOT was recorded for the benefit of Ampro Mortgage, a division of United Financial Mortgage Corporation ("Ampro"), the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

predecessor to Alliance as the lender, and MERS as nominee for the lender. Isadore was feeble with macular degeneration at the time and could not have signed the documents. Complaint, ¶ 9.

On April 16, 2008, Ampro assigned the DOT to IndyMac Bank, FSB ("IndyMac") via MERS, but that assignment was not acknowledged until August 2008 [doc. 1, Exh. 1]. Ampro filed a chapter 7 bankruptcy petition and was dissolved on February 1, 2008. By the time of the purported assignment, Ampro had been dissolved.

Also on April 16, 2008, IndyMac transferred the DOT to Deutsche Bank as trustee for Alliance 2007-OA1, but was not acknowledged until December 29, 2009 [doc. 1, Exh 2]. A third "correction of assignment" was recorded on March 17, 2017. Complaint, ¶ 30.

The Pooling and Service Agreement regarding the DOT (the "PSA") provided that the depositor, master servicer, trustee or the securities administrator were not authorized to accept contributions to the real estate mortgage investment conduits after the closing date on May 30, 2007. The appropriate processing for the Property was never properly transferred to Alliance Bancorp 2007 OA-1 per the requirements of the PSA prospectus. Consequently, Defendants have never had proper title to the property. Complaint ¶ 16, 27-31, 36-38.

The DOT and accompanying documents (*e.g.*, the grant deed and adjustable rate rider) bears a signature forged by Isadore Rosenberg's former caregiver, David Curtis Harder. The Complaint includes a Forensic Handwriting Expert Summary Report [doc. 1, Exh. 4].

On August 29, 2009, Plaintiff filed an action via the probate proceedings for Isadore Rosenberg's estate, seeking to determine title to the Property and asserting that the DOT was a forgery (the "Probate Action"). Complaint, ¶ 13-14. Plaintiff filed a request to voluntarily dismiss the Probate Action in January 2015, and the probate court granted the request with prejudice. Plaintiff appealed, and the appellate court reversed the order of dismissal, ordering the petition be dismissed without prejudice. The Probate Action was dismissed without prejudice on January 19, 2017. Complaint, ¶ 20.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

Since 2008, One West and Deutsche Bank have initiated a number of wrongful foreclosure proceedings against Plaintiff. One West and Deutsche Bank do not have rights to foreclosure based on legitimate documentation, because Alliance never had a proper loan. Based on this, under the California Homeowner's Bill of Rights, Plaintiff seeks redress of material violations of the foreclosure process.

None of the entities listed as Defendants in this adversary proceeding filed a proof of claim in the main bankruptcy case. At the time the adversary complaint was filed, a nonjudicial foreclosure of the Property was scheduled for November 28, 2017.

On January 23, 2018, Plaintiff voluntarily dismissed the Complaint with respect to Defendants CIT Bank (f.k.a. One West Bank, erroneously sued as One West Bank) and Alliance Bancorp [doc. 13]. That dismissal left Deutsche Bank, MERS and Ocwen ("Defendants") as the only remaining parties to this action.

On February 13, 2018, Ocwen and MERS (together, "Movants") filed a motion for judgement on the pleadings (the "Motion") [doc. 16]. The Motion was accompanied by a request for judicial notice in support of the Motion (the "RJN") [doc. 17]. Movants argue that the allegations in the Complaint regarding forgery, fraud and rescission are time barred, and that the challenge to the foreclosure based on the alleged broken chain of title fails because Plaintiff has no standing. Movants also argue that the matter in the complaint is non-core and they will not consent to final judgment.

On March 9, 2018, Deutsche Bank, the current beneficiary of the loan secured by the DOT, filed a joinder in the Motion and the RJN (the "Joinder") [doc. 24]. Because the allegations against Deutsche Bank are identical to the allegations against Movants, Deutsche Bank joins in each and every argument and authority in the Motion. Deutsche Bank also states that it does not consent to the entry of final orders or judgments in this case because it is a non-core matter.

On March 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition"). The Opposition asserts, among other things that: (1) Plaintiff filed this adversary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

proceeding in 2017, as a continuation of litigation that was commenced in 2009; (2) that he has standing to challenge the assignments under California law; (3) that the Motion gives rise to estoppel, and Movants have impliedly admitted all the allegations in the Complaint are true; (4) the bankruptcy case has not been properly discharged because there was no proper 11 U.S.C. § 341(a) meeting; and (4) a Rule 12(c) motion is not appropriate because Plaintiff has initiated the discovery process by having an initial conference pursuant to Federal Rule of Civil Procedure 26.

On March 28, 2018, Defendants filed a reply to the Opposition (the "Reply") [doc. 32]. In the Reply, Movants request that the Motion be granted with prejudice (without leave to amend).

## **II. DISCUSSION**

### **A. Jurisdiction**

Movants argue that the claims asserted in the Complaint will have no effect on Plaintiff's discharge in this case, and there are no issues to be determined under bankruptcy law. However, Movants do not cite any authority to support the blanket statement that a bankruptcy court does not have jurisdiction to hear matters which do not affect the discharge in a case.

Movants also argue that even if Plaintiff prevailed, the estate would remain insolvent. However, Plaintiff's Schedule D [doc. 1, p. 20] reflects that Ocwen (as servicer for Deutsche Bank) is the only creditor with a claim secured by the Property. If that lien were entirely voided, the Trustee could sell the Property, and the nonexempt equity could leave the estate with funds to pay creditors.

Finally, Movants and Deutsche Bank assert that they do not consent to the entry of final orders or judgments by this Court. This does not deprive the Court of jurisdiction; the Court can issue findings of fact and conclusions of law regarding non-core matters for approval by the district court. In addition, some of the causes of action in the complaint are based on bankruptcy rules or statutes. The Court may enter final judgment regarding core matters without the parties' consent. 28 U.S.C. § 157(b) (1) ("Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11... and may enter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg  
appropriate orders and judgments....").

Chapter 7

**B. Standard for Judgment on the Pleadings**

Federal Rule of Civil Procedure ("Rule") 12(c), applicable through FRBP 7012, provides that "[a]fter the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings." In deciding a Rule 12(c) motion, the court applies the same standards applicable to a Rule 12(b)(6) motion. *See Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1054, fn. 4 (9th Cir. 2011) ("Rule 12(c) is 'functionally identical' to Rule 12(b)(6)").

In resolving a Rule 12(c) motion, the court can consider (without converting the motion to a summary judgment): (a) the complaint and answer; (b) any documents attached to or mentioned in the pleadings; (c) documents not attached but "integral" to the claims; and (d) matters subject to judicial notice. *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011); *Massey v. Ojaniit*, 759 F.3d 343, 347-348 (4th Cir. 2014).

However, under Rule 12(d), 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."

"A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine*, 143 F.3d 1196, 1120 (9th Cir. 1998). Nonetheless, when they contradict matters subject to judicial notice, the court need not accept alleged facts as true. *Sears, Roebuck & Co. v. Metropolitan Engraver, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956).

A motion to dismiss pursuant to Rule 12(b)(6):

will only be granted if the complaint fails to allege enough facts 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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT...

**Steven Mark Rosenberg**

**Chapter 7**

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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted)(citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). "[Rule] 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (U.S. 2007)(citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

### **C. Leave to Amend**

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

*Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted). Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

**D. Timing of the Motion**

Plaintiff asserts that the Motion was not timely brought because discovery has already opened. However, Rule 12(c) allows for a motion for judgment on the pleadings "after the pleadings are closed—but early enough not to delay trial." The opening of discovery has no effect on this timeframe. In addition, as Movants point out, the Court has not yet scheduled a motion cut-off deadline or a trial date. Consequently, the Motion was timely filed.

**E. Statute of Limitations**

Movants assert that any claims regarding forgery, cancellation or rescission are time barred under California law. Under California Code of Civil Procedure ("CCCP") § 337, "An action upon any contract, obligation or liability founded upon an instrument in writing" must be brought within four years. Under CCP § 338(d) an "action for relief on the ground of fraud or mistake" must be brought within three years.

"Equitable tolling applies to situations in which a party has several legal remedies, pursues one such remedy reasonably and in good faith, and then turns to the second remedy after the statute has expired on that remedy." Equitable Tolling of Statute of Limitations, California Practice Guide: Administrative Law Ch. 16-D. Equitable tolling can also be applied where the claimant "has actively pursued his judicial remedies by filing a defective pleading or where he has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 90 (1990).

Plaintiff filed the Probate Action on August 29, 2009. Plaintiff was aware of the fraud and forgery causes of action at that time. Plaintiff argues that this action is merely an extension of the Probate Action, which concluded after the limitations period ended, in 2017. There is no authority supporting this argument. This proceeding, a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

bankruptcy court adversary proceeding, is not a continuation of the state court proceeding. Consequently, based on California law, Plaintiff's claims of fraud or forgery are time-barred.

**F. 11 U.S.C. § 524(a)(2)**

Plaintiff argues that, as a result of 11 U.S.C. § 524(a)(2), Defendants are barred from attempting to collect their debt secured by the Property. Pursuant to § 524(a)(2), a discharge in a bankruptcy case "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived."

Plaintiff's allegations do not indicate that Defendants have taken any action which violates the discharge injunction in his bankruptcy case. Plaintiff asserts that Defendants are in the process of proceeding with a judicial foreclosure against the Property. Such an action is not in violation of the discharge injunction, which applies only to a debtor's *personal liability*. Discharge does not impair a creditor's right to proceed *in rem* against property by which its claim is secured. *In re Blendheim*, 803 F.3d 477, 493-494 (9th Cir. 2015).

**G. FRBP 3001(c)(2)(B) and (C)**

Plaintiff alleges that Defendants violated FRBP 3001(c)(2)(B) and (C) by failing to file a proof of claim and accompanying documents. Under 11 U.S.C. § 501(a), a creditor "may file a proof of claim." A "claim" is a right to payment without regard to whether the creditor has filed a proof of claim. 11 U.S.C. § 101(5). Secured creditors must generally file proofs of claim in order to receive payment from the bankruptcy estate; however, "a lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim." FRBP 3002(a).

Unless affirmative action is taken to avoid a lien, a "bankruptcy discharge extinguishes only one mode of enforcing a claim—an in personam action;" liens and other secured interests survive the bankruptcy. *Johnson v. Home State Bank*, 501 U.S. 78, 79 (1991). In other words, a bankruptcy discharge has the effect of relieving a debtor's personal liability, but it does not extinguish debts secured by property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Consequently, regardless of Plaintiff's discharge, Defendants may take action to satisfy their secured claim through the sale of the Property.

Furthermore, a failure to file a proof of claim does not give rise to a cause of action which Plaintiff may assert. As concerns Plaintiff, the only effect of a secured creditor's failure to file a proof of claim is that the secured creditor may not take part in distributions from the estate, if distributions to creditors from unencumbered, nonexempt property ever become available. Accordingly, Plaintiff has not stated a cause of action under FRBP 3001(c)(2), nor can Plaintiff amend the Complaint in any way that would state one.

#### **H. Fraudulent Concealment**

Fraudulent concealment of a cause of action effectively "tolls" that cause of action for the period for which it was fraudulently concealed. In order to assert that a cause of action was tolled under a fraudulent concealment theory, a plaintiff must show: (1) the substantive elements of fraud; and (2) an excuse for late discovery of the facts. *Investors Equity Life Holding Co. v. Schmidt*, 195 Cal. App. 4th 1519 (4th Dist. 2011). The elements of an action for fraud and deceit based on concealment are:

(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage."

*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.*, 6 Cal. App. 4th 603, 612-613 (1992).

Plaintiff asserts his fourth cause of action on the theory that Defendants have known that their chain of assignment was broken throughout the course of the state law proceeding and Plaintiff's bankruptcy proceeding, and they fraudulently concealed that information. The Court need not assess whether Plaintiff has properly alleged fraudulent concealment, or timely brought the allegation, if Plaintiff cannot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

demonstrate that he sustained damage as a result of the concealed fact. Plaintiff has not demonstrated that he has standing to recover based on an improper assignment.

In California, *post*-foreclosure wrongful foreclosure actions based on improper chain of title are appropriate. See *Yvanova v. New Century Mortgage Corp.*, 62 Cal.4th 919 (2016); *Glaski v. Bank of Am., Nat'l Ass'n*, 218 Cal. App. 4th 1079 (2013). However, California Courts of Appeal have held that a homeowner lacks standing in a pre-foreclosure action to challenge a foreclosure sale. *Saterbak v. JP Morgan Chase Bank, N.A.*, 245 Cal. App. 4th 808 (2016); *Yhudai v. IMPAC Funding Corp.*, 1 Cal.App.5th 1252 (2016).

Furthermore, under *Yvanova*, Plaintiff lacks standing to argue the voidability of the assignment of the DOT. In that case, a plaintiff brought a post-foreclosure suit for wrongful foreclosure of her property. The plaintiff argued that the lender lacked an interest in her property giving it the right to foreclose because its interest was based on an assignment made after the closing date in the pooling and service agreement. The California Supreme Court reasoned:

California law does not give a party personal standing to assert rights or interests belonging solely to others... When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself.

*Yvanova*, 62 Cal. 4th at 936. The California Supreme Court held that void assignments do confer standing on a borrower to bring a post-foreclosure action. *Id.* at 942-943.

Plaintiff has not asserted that any party to the PSA or the assignments have taken action to render the assignments void, and Plaintiff, who was not a party to the PSA, does not have the power to bring a suit to void it. Accordingly, Plaintiff has not yet suffered harm giving him standing to bring a suit based on the allegedly improper assignments of the DOT. Moreover, because Plaintiff's failure to state a claim is



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

based on lack of standing, Plaintiff cannot amend the Complaint to state a claim for relief on the current facts.

In any event, Plaintiff would have a problem demonstrating damages based on the alleged improper chain of assignments. Regardless of the specific holder of the assignment, the Property is encumbered. The harm to Plaintiff is not a result of the allegedly improper assignment or the failure of any Defendant to reveal the nature of the assignments to him. Consequently, Plaintiff has not asserted a cause of action based on fraudulent concealment of the allegedly improper assignments of the DOT.

**I. 18 U.S.C. § 157**

Pursuant to 18 U.S.C. § 157:

a person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

- (1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;
- (2) files a document in a proceeding under title 11; or
- (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

This statute deals with criminal bankruptcy fraud, and criminal matters are generally not within the jurisdiction of bankruptcy courts. *See Matter of Hipp, Inc.*, 895 F.2d 1503, 1511 (5th Cir. 1990). In addition, as an initial matter, Plaintiff has not stated a cause of action under 18 U.S.C. § 157 because the statute does not create a private cause of action. *See Lee v. United States Agency for Int'l Dev.*, 859 F.3d 74, 76 (D.C. Cir. 2017) (holding that no private right of action is necessarily created by a criminal statute which does not expressly create one).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

---

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

A bankruptcy court may refer a matter to the district court and a district attorney where the court believes that the statute has been violated and such referral is appropriate. *See In re McDonald*, 497 B.R. 489, 493 (Bankr. D.S.C. 2013). Here, however, it is not clear that Defendants have violated 18 U.S.C. § 157. Plaintiff has not made allegations regarding any specific filing made by any Defendant in the bankruptcy proceeding. The only filing by any Defendant in the main case is a request for special notice by Deutsche Bank. Plaintiff alleges that Defendants made misrepresentations to him and to the court in the Probate Action regarding the validity of their title, but such a representation is not punishable under § 157 (which creates criminal liability for fraudulent *filings* in a *bankruptcy* proceeding). Consequently, Plaintiff has not asserted a cause of action upon which relief can be granted under § 157, and would not be able to amend the Complaint to assert one.

### **J. Declaratory Relief**

Declaratory relief is a procedural device for granting a remedy. It does not create any substantive rights or causes of action. *Harris County Texas v. MERSCORP Inc.*, 791 F.3d 545, 552 (5th Cir. 2015). Courts inquire whether there is a "substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

Plaintiff argues that declaratory relief is appropriate based on the actions of Defendants to foreclose on the Property. However, as discussed above, Plaintiff has not asserted any actual wrongdoing with respect to the foreclosure actions. In addition, based on his fraudulent concealment theory, Plaintiff cannot assert any harm pre-foreclosure. Therefore, Plaintiff does not have a "substantial controversy" with Defendants upon which declaratory relief can be granted, and he would not be able to amend the Complaint to assert one.

### **III. CONCLUSION**

For the foregoing reasons, the Court will grant the motion without leave to amend as to Movants and Deutsche Bank.

Movants must submit the order within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 02, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg

Chapter 7

**Party Information**

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

CIT BANK, N.A. (f/k/a One West

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg**

KRISTIN WEBB

**Chapter 7**

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

- #18.00** Status conference re complaint :
- (1) violation of 11 U.S.C.code 524(a)(2)-debtor discharge injunction.
  - (2) violation of FRBP, Rule 3001(c)(s)(c); failure to file proof of claim re security interest statement of amount to cure default as of petition filing date.
  - (3) vilocation of FRBP, rule 3001(c)(3)(C), failure to file attachment to appropriate official form re security interest in debtor's principal residence.
  - (4) fraudulent concealment
  - (5) violation of U.S.C. code 157;fraud and deceit
  - (6) declaratory relief

fr. 1/24/18; 3/14/18; 4/4/18; 4/18/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust	Pro Se
Ocwen Loan Servicing, Inc	Pro Se
Alliance Bancorp, Inc	Pro Se
Alliance Bancorp Estate Trustee	Pro Se
MERS Mortgage Electronic	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 02, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Mark Rosenberg Chapter 7**

One West Bank Pro Se

DOES 1 through 25, inclusive Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg Pro Se

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

10:30 AM

**1:14-10835 PlanetHospital.com LLC**

**Chapter 7**

**#1.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

SulmeyerKupetz, Attorney for Chapter 7 Trustee

LEA Accountancy, LLP, Accountant for Chapter 7 Trustee

Docket 180

**Tentative Ruling:**

David Seror, chapter 7 trustee – approve fees of \$2,750.00. The chapter 7 trustee is authorized to receive a pro rata reduced amount of \$615.07 in fees.

Lea Accountancy, LLP (“LEA”), accountant to chapter 7 trustee – approve fees of \$14,435.00 and reimbursement of expenses of \$609.07. LEA is authorized to receive pro rata reduced amounts of \$3,250.37 in fees and \$136.23 in expenses. The Court will not approve \$97.50 in fees for the reasons below.

SulmeyerKupetz, counsel to chapter 7 trustee – approve fees of \$62,755.00 and reimbursement of expenses of \$1,531.26. SulmeyerKupetz is authorized to receive pro rata reduced amounts of \$14,370.30 in fees and \$342.48 in expenses. The Court will not approve \$1,495.00 in fees for the reasons below.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 03, 2018

Hearing Room 301

10:30 AM

CONT... PlanetHospital.com LLC

Chapter 7

case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

In accordance with the foregoing, the Court will not approve the following fees because they appear unnecessary and/or excessive:

Category	Timekeeper	Date	Description	Time	Fee
Asset Analysis & Recovery	JDB	10/3/14	Voicemail from JPMorgan Chase re production of documents in accordance with Rule 2004 request	0.1	\$34.00
Asset Analysis & Recovery	JDB	1/7/14	Voicemail from representative at JPMorgan Chase re production of requested documents	0.1	\$34.00
Asset Analysis & Recovery	JDB	10/28/14	Voicemail from Cynthia Wolfgang at Wells Fargo re response to subpoena	0.1	\$34.00
Asset Analysis & Recovery	JDB	10/30/14	Voicemail from JPMorgan Chase re response to Rule 2004 subpoena	0.1	\$34.00
Asset Analysis & Recovery	JDB	1/28/15	Voicemail from Cherif ElSheikh re questions about state court action	0.1	\$34.00
Asset Analysis & Recovery	JDB	3/21/16	Voicemail from Rudy Rupak re status of additional documents requested relating to debtor's prepetition transfers	0.1	\$34.00
Case Administration	JDB	9/16/14	Review and analysis of notice of continued meeting of creditors for debtor's failure to appear	0.1	\$34.00
Case Administration	JDB	10/20/14	Review and analysis of notice of continued meeting of creditors	0.1	\$34.00
Case Administration	JDB	11/18/14	Review and analysis of notice of continued 341(a) meeting of creditors	0.1	\$34.00
Case Administration	JDB	12/22/14	Review and analysis of notice of continuance of 341(a) meeting of creditors	0.1	\$34.00
Case Administration	JDB	1/20/15	Review and analysis of notice of continued 341(a) meeting of creditors	0.1	\$34.00
Case Administration	JDB	2/23/15	Review and analysis of notice of continued meeting of creditors	0.1	\$34.00
Case Administration	JDB	4/28/15	Review and analysis of notice of continued meeting of creditors	0.1	\$34.00

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005)



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

10:30 AM

**CONT... PlanetHospital.com LLC**

**Chapter 7**

(holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Timekeeper	Date	Description	Time	Fee
Fee / Employment Application	ALS	8/6/14	Draft of notice of Application and Application to Employ SulmeyerKupetz as attorneys for chapter 7 trustee	1.80	\$405.00
Fee / Employment Application	ALS	8/8/14	Finalize draft of Notice of Application and Application to Employ SK as attorneys for chapter 7 trustee	0.10	\$135.00
Fee / Employment Application	EDM	8/8/14	Review and revise Application to Employ	0.30	\$175.50
Fee / Employment Application	ALS	8/12/14	Follow up on signature page	0.10	\$22.50

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 03, 2018

Hearing Room 301

10:30 AM

CONT... PlanetHospital.com LLC

Chapter 7

Fee / Employment Application	ALS	9/2/14	Prepare, file and serve Notice of Application and Application to Employ SulmeyerKupetz as attorneys for chapter 7 trustee	0.80	\$180.00
Fee / Employment Application	ALS	9/9/14	Draft of Declaration of Non-opposition, Notice of Lodgment and Oder Authorizing Employment of SulmeyerKupetz	0.60	\$135.00

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

In accordance with the foregoing, the Court does not approve the fees billed by LEA for the services identified below:

Date	Timekeeper	Description	Time	Fee
2/4/16	Terry Fussell	Download petition and schedules from Pacer	0.30	\$97.50

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

PlanetHospital.com LLC

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... PlanetHospital.com LLC**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Elissa Miller  
Jason Balitzer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

10:30 AM

**1:16-10851 Norma E Jovel**

**Chapter 7**

**#2.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 37

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee - approve fees of \$1,250.00 and reimbursement of expenses of \$613.89.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Norma E Jovel

Represented By  
Michael H Colmenares

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11012 Hans Jurgen Briese**

**Chapter 7**

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

Nancy Zamora, Chapter 7 Trustee

SLBiggs, Accountants for Trustee

Docket 76

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$40,875.00 and reimbursement of expenses of \$2,944.00 on a final basis.

SLBiggs, A Division of SingerLewak, LLP (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$3,685.50 and reimbursement of expenses of \$192.29.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Hans Jurgen Briese

Represented By  
Bahram Madaen

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11781 Maria Elaine Romeo**

**Chapter 7**

**#4.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

SLBiggs, Accountants for the Trustee

Docket 58

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$12,242.91 and reimbursement of expenses of \$1,760.00 on a final basis.

SLBiggs, A Division of SingerLewak, LLP, accountant to chapter 7 trustee – approve fees of \$4,373.00 and reimbursement of expenses of \$229.09.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Maria Elaine Romeo

Represented By  
Rob R Nichols

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 03, 2018

Hearing Room 301

1:00 PM

1:13-17509 Peter Medvedev and Rita Medvedev

Chapter 11

#5.00 Post Confirmation status conference

fr. 11/19/15; 5/19/16; 11/17/16; 5/18/17; 11/16/17;  
1/25/18

Docket 157

\*\*\* VACATED \*\*\* REASON: Order Granting Final Decree and Order  
Closing Case entered 2/14/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Peter Medvedev

Represented By  
Joseph Caceres

**Joint Debtor(s):**

Rita Medvedev

Represented By  
Joseph Caceres

**Movant(s):**

Peter Medvedev

Represented By  
Joseph Caceres

Rita Medvedev

Represented By  
Joseph Caceres

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 4/16/18.  
Hearing continued to 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes



United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, May 03, 2018

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#7.00 Confirmation hearing re First Amended Chapter 11 Plan

**Stip to continue filed 4/13/18**

Docket 114

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 4/16/18.  
Hearing continued to 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#8.00** Disclosure statement describing chapter 11 plan

Docket 214

**Tentative Ruling:**

In light of the *Order Approving Sale of Substantially All of the Assets of the Debtors' Estates Free and Clear of Liens; Authorizing the Assumption and Assignment of Franchise Agreements and Adjudicating Good Faith Pursuant to 11 U.S.C. § 363(m)* [doc. 257] and the *Status Conference Report* [doc. 270], the Court will continue this hearing to **June 7, 2018 at 1:00 p.m.** to coincide with the chapter 11 case status conferences in the debtors' cases.

Appearances on May 3, 2018 are excused.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#9.00** Motion for order authorizing use of cash collateral

Docket 15

**Tentative Ruling:**

Deny. The debtor has not provided a copy of any deed of trust in order to demonstrate that Wells Fargo, N.A., or any other lienholder, has an interest in the rents generated by the real property at issue, such that those rents constitute the cash collateral of those lienholders.

The Court will prepare the order.

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#10.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

Is the debtor current on United States Trustee fees?

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **July 13, 2018.**

Deadline to mail notice of Bar Date: **May 14, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **July 31, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on August 16, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor (s) in possession to file a proposed plan and related disclosure statement.

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#12.00** Trustee's Motion for entry of order (A) Approving sale of property free and clear of liens and encumbrances pursuant to 11 U.S.C. § 363(b) and (f), (B) Finding purchaser qualifies as a good faith purchaser pursuant to 11 U.S.C. § 363(m), (C) Approving overbid procedures, and (D) Waiving Fed. R. Bankr. P. 6004(h) stay

Docket 129

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#13.00 Debtor's motion for order dismissing case**

Docket 188

**Tentative Ruling:**

Deny, based on the facts set forth in the opposition filed by the chapter 11 trustee [doc. 198], the Declaration of Nancy J. Zamora filed in support of that opposition, and the opposition filed by creditor Merdad Vafi [doc. 197], and the prejudice to creditors that would result from the dismissal of this case, when the debtor has not sufficiently explained how she can and will pay the claims of her creditors following dismissal, in accordance with the priority scheme set forth in the Bankruptcy Code.

Regarding the debtor's evidentiary objections [doc. 210] to the Declaration of Nancy J. Zamora, the Court will overrule the debtor's objections to paragraphs 9, 10 and 12 of that Declaration and will sustain the debtor's objection to paragraph 13.

The chapter 11 trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#14.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Authorizing assumption and assignment of unexpired real property lease; (4) Approving payment of commissions; (5) Finding purchaser is a good faith purchaser; and (6) Waiving stay under Rule 6004(H)

[17315 Cagney Street, Granada Hills, CA 91344]

Docket 175

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On October 11, 2017, Mehri Akhlaghpour ("Debtor") filed a voluntary chapter 11 petition. On February 1, 2018, the Court issued an order directing the appointment of a chapter 11 trustee [doc. 101]. On February 6, 2018, Nancy J. Zamora was appointed the chapter 11 trustee (the "Trustee") [doc. 107].

On her schedule A/B, Debtor listed an ownership interest in a number of real properties. Among them were properties located at 17315 Cagney Street, Granada Hills, California 91344 (the "Cagney Property") and 16320 Gledhill Street, North Hills, California 91343 (the "Gledhill Property") (the Cagney Property and the Gledhill Property together, the "Properties") [doc. 11, p. 6-7]. The Debtor did not list either of these properties as exempt in her schedule C [doc. 11, p. 16-18].

On February 7, 2018, the Trustee filed an application to employ Rodeo Realty, Inc (the "Broker") as a real estate broker [doc. 110]. On March 15, 2018, the Court entered its order approving the employment of the Broker [doc. 135].

On March 16, 2018, the Trustee filed a motion to sell Debtor's property located at 26943 Hillsborough Parkways, #27, Santa Clarita, California 91354 (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

"Hillsborough Property") [doc. 145]. On the same day, the Trustee filed a second motion to sell Debtor's property located at Woodley Place, Unit 28, North Hills, California 91343 (the "Woodley Property") [doc. 146]. On April 17, 2018, the Court granted the motions to sell the Hillsborough Property and the Woodley Property [docs. 192, 193].

On March 22, 2018, the Trustee filed a third motion to sell Debtor's property located a 5454 Zelzah Avenue, #302, Encino, California 91316 (the "Zelzah Property") [doc. 155]. On April 24, 2018, the Court granted the motion to sell the Zelzah Property [doc. 205].

On April 12, 2018, the Trustee filed a fourth motion to sell the Cagney Property free and clear of liens, subject to overbid, and to assume and assign the unexpired lease on the Cagney Property (the "Cagney Motion") [doc. 175]. Also on April 12, 2018, the Trustee filed a motion to sell the Gledhill Property free and clear of liens subject to overbid, and to assume and assign the unexpired lease on the Gledhill Property (the "Gledhill Motion") (the Cagney Motion and the Gledhill Motion together, the "Sale Motions") [doc. 178].

On April 18, 2018, creditor PNC Bank, National Association ("PNC Bank") filed a response to the Cagney Motion, consenting to the sale on the condition that PNC Bank's lien is paid in full pursuant to a payoff, or a paid off pursuant to a short sale agreement approved in writing by PNC Bank (the "Response") [doc. 196]. The Response requested that order approving the Cagney Motion include the below language:

The loan secured by a first lien on real property located at 17315 Cagney Street, Granada Hills, CA 91344 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from Select Portfolio Servicing, Inc., servicing agent for PNC Bank, National Association.

[doc. 196, p. 2]

On April 19, 2018, Debtor filed an opposition to the Cagney Motion (the "Cagney



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 03, 2018

Hearing Room 301

2:00 PM

CONT... **Mehri Akhlaghpour**

**Chapter 11**

Opposition") [doc. 199]. Also on April 19, 2018, Debtor filed an opposition to the Gledhill Motion (the "Gledhill Opposition") (the Cagney Opposition and the Gledhill Opposition together, the "Oppositions") [doc. 200]. On April 25, 2018, the Trustee filed an omnibus reply to the Oppositions and the Response (the "Reply") [doc. 162].

## II. DISCUSSION

### *A. General Sale Standard*

Pursuant to 11 U.S.C. § 363(b)(1), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" subject to an exception that does not apply here. A trustee has broad authority to negotiate sales of estate property under 11 U.S.C. § 363(b)(1); *see also In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). In reviewing motions to sell property under § 363(b), a court must determine whether sound business reasons support the sale outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

### *B. Good Business Reason Justifying Sale*

Debtor objects to the sales of the Properties on the grounds that the Sale Motions propose to sell substantially all of the estate assets and the sales are not supported by a good business justification. Debtor references *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983). In *Lionel*, the Second Circuit Court of Appeals outlined six factors for determining whether a good business reason exists justifying a sale of substantially all of the assets of the debtor.

*Lionel* is distinguishable because the chapter 11 trustee in *Lionel* sought authority to sell substantially all of the estate's assets. Here, the Sale Motions do not contemplate the sale of all or substantially all of the estate's property, because the estate owns one other real property not subject to the Sale Motions. In addition, the estate owns a 100% interest in eight business entities and 32% interest in one business entity. [doc. 59, pp. 8-9]. Even accounting for the Trustee's additional sales of the Hillsborough, Woodley and Zelzah Properties, the Sale Motions will not result in the sale of substantially all of the estate property.

In addition, in *Lionel* the chapter 11 trustee did not give any business justification for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

the sale, other than the appeasement of the committee of largest creditors. *Id.* at 1071. Here, the Trustee has articulated a number of reasons for the sales, including that plan feasibility depends on the sales, that continued operation of the Properties as rental properties is not tenable, and that the prices are fair and reasonable based on the Trustee's marketing efforts.

Debtor also objects to the sale on the grounds that: (1) the sale is premature because the Properties are not a wasting asset; (2) there is no justifiable cause for selling the Properties because the real estate market in the Los Angeles area is improving; and (3) the sale price is inadequate.

Here, the Sale Motions are not premature. Debtor filed her chapter 11 petition nearly six months ago. Given that the marketing of the Properties generated multiple interested buyers, it appears that the sale prices reflect the market, and that the Properties have been marketed for enough time to generate competitive interest. Furthermore, as the Trustee points out in the Reply, the Properties do not generate net rental income. Debtor asserts that the Cagney Property has net rental surplus of \$1,676.64 and the Gledhill Property has a net rental surplus \$398.76. However, these totals do not include the second mortgage on the Cagney Property, the annual tax bills for the Properties, the monthly gardening and maintenance expenses and for repairs. When these expenses are added to the calculation, the Properties are actually operating at a net loss [doc. 206].

***C. The Trustee's Business Judgment***

As outlined by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"):

The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances. The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

*In re Lahijani*, 325 B.R. 282, 288–89 (9th Cir. B.A.P. 2005).

The Trustee has been a chapter 7 trustee since 1998 and also has been a chapter 11 trustee in cases involving real estate. In those capacities, the Trustee has operated rental properties and sold over one hundred properties [doc. 175, Decl. of Nancy Zamora, ¶ 2]. Based on the Trustee's record of experience, she may properly be afforded business judgment deference.

***D. Sufficient Marketing and Reasonableness of Price***

Debtor argues that the Properties have not been sufficiently marketed, because the prices contemplated in the Sale Motions are below market value. Debtor attached no evidence to the Oppositions in support of this contention, other than a declaration by Debtor stating she believes the prices in the Sale Motions are below market value.

Debtor's belief is not persuasive evidence that the purchase prices are too low. The Broker has engaged in marketing efforts for the Properties, including listing the Properties on the multiple listing service and on various internet sites that offer listing services. The Broker also conducted showings and appointments at the Properties and received four offers on the Cagney Property and four offers on the Gledhill Property. As of the date of the Sale Motions, the Broker continued to market the Properties to generate overbids. These efforts and offers not only establish that the Properties have been thoroughly marketed, but also that the sale prices reflect the market values of the Properties.

***E. Sub-Rosa Plan***

Debtor argues that the sale of the Properties, along with the sale of the Hillsborough, Woodley and Zelzah Properties, constitutes an impermissible "sub-rosa" plan. Debtor further indicates that she believes that the Trustee must first establish that a plan is infeasible before liquidating assets.

In *Lionel*, the Second Circuit Court of Appeals considered a proposed pre-confirmation sale, noting that such a sale would be appropriate if there was an "articulated business justification" for it. *Lionel*, 722 F.2d at 1070.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Furthermore, the proposed sale does not take the place of a plan. After paying the allowed claims of creditors secured by the Properties, the Trustee is not proposing to distribute net proceeds to other creditors at this time. *See In re Air Beds, Inc.* 92 B.R. 419 (9th Cir. B.A.P. 1988). Consequently, the contemplated sales of the Properties do not constitute an impermissible "sub-rosa" plan.

***F. Due Process Considerations***

Debtor argues that the Sale Motions should not be approved because § 363 sales are an inappropriate violation of the due process rights of Debtor and creditors to the estate. However, Debtor and the estate's creditors have been served with notice of the sale, and have had an opportunity to object. Furthermore, the Trustee has demonstrated that the sales of the Properties will generate funds with which she can make distributions to creditors. Finally, pursuant to the overbid procedures built into the sale terms, Debtor and any other interested party has the opportunity to bid on the Properties. Consequently, Debtor has not demonstrated that any party in interest's due process rights have been violated.

**III. CONCLUSION**

The Court will grant the Motions.

The Trustee must submit the orders within seven (7) days.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#15.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Authorizing assumption and assignment of unexpired real property lease; (4) Approving payment of commissions; (5) Finding purchaser is a good faith purchaser; and (6) Waiving stay under Rule 6004(H)

[16320 Gledhill Street, North Hills, CA 91343]

Docket 178

**Tentative Ruling:**

See calendar no. 14.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 03, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10071 LOST COAST RANCH INC.**

**Chapter 7**

**#16.00 Debtor's motion for order dismissing case**

Docket 27

**Tentative Ruling:**

Deny, based on the debtor having submitted no evidence in support of the motion, the facts set forth in the opposition filed by the chapter 7 trustee [doc. 35], the Declaration of David Seror filed in support of that opposition, the opposition filed by secured creditors American AgCredit, FLCA and American AgCredit, PCA [doc. 37], the Declaration of Thomas Mouzes filed in support of that opposition, and the prejudice to creditors that could result from the premature dismissal of this case, when the debtor has not fulfilled its statutory obligations under the Bankruptcy Code.

The chapter 7 trustee must submit the order within seven (7) days.

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

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#1.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case due to expiration of the plan  
fr. 3/13/18;

Docket 97

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11699 Larry John Phillips and Clara Josephine Phillips**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18

Docket 89

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Larry John Phillips

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Clara Josephine Phillips

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18; 3/13/18;

Docket 68

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#48.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 11/7/17; 1/9/18; 2/13/18; 4/10/18;

Docket 52

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11964 Luis E. SOLIS**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 12/12/17; 2/13/18; 3/13/18;

Docket 53

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Luis E. SOLIS

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12702 LaDawn Opal Townsend**

**Chapter 13**

**#50.00** Trsutee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18;

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

LaDawn Opal Townsend

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roy Glen Stout

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Sherri Sue Kirby-Stout

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10204 Juan Talavera and Beatriz Talavera**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 42

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Talavera

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Beatriz Talavera

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 3/13/18; 4/10/18;

Docket 67

**\*\*\* VACATED \*\*\* REASON: Withdrawal of Motion filed 4/20/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 303**

11:00 AM

**1:16-12389 David A Neporent**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 39

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

David A Neporent

Represented By  
Devin Sawdayi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12523 Brent Carpenter**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 6/13/17; 8/8/17; 10/3/17; 12/12/17; 3/13/18

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brent Carpenter

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to  
make plan payments

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12885 Daphne Singleterry**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18

Docket 41

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Daphne Singleterry

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10475 Princess Fletcher**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18

Docket 63

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Princess Fletcher

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10710 Nick A Avedissian and Hripsime Avedissian**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 31

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Nick A Avedissian

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Hripsime Avedissian

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12748 Mercedes Benitez**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 34

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mercedes Benitez

Represented By  
Matthew D Resnik  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#63.00** Motion to turn over funds in the amount of \$10,065.55 to the debtors as it is property of the bankruptcy estate; request for attorney fees of \$2,500.00

fr. 3/13/18; 4/10/2018;

Docket 95

**Tentative Ruling:**

Grant pursuant to the Court's rulings from March 13, 2018 and April 10, 2018.

On April 3, 2018, Jose P. Ginez and Corazon S. Ginez ("Respondents") filed an untimely opposition to the pending motion (the "Opposition") [doc. 116]. In the Opposition, Respondents stated that they received notice of the motion on March 27, 2018, not on January 23, 2018 as stated in the proof of service attached to the motion. Respondents also contended that on March 27, 2018, Respondents first learned that the debtors were in bankruptcy. Respondents requested additional time to obtain an attorney to represent them in this matter. No declaration signed under penalty of perjury was attached to the Opposition. Listed on the caption of the Opposition was Respondents' mailing address, "5526 Dunbar Drive, Oxnard, CA 93033." At the hearing on April 10, 2018, Ms. Ginez appeared and repeated the contention that Respondents had no notice of the debtors' bankruptcy case.

Ms. Ginez' contentions are not credible. On March 24, 2014, the debtors filed their chapter 13 petition [doc. 1]. In their schedule D, the debtors listed Respondents and their address, "5526 Dunbar Dr., Oxnard, CA 93033-9111." (Doc. 1, at p. 22.) The debtors listed Respondents and their address on the creditor mailing list. (*Id.*, at p. 67.) Respondents also received notice of the debtors' chapter 13 plan on March 24, 2014. (Doc. 8, at p. 19.) On September 15, 2015, Ms. Ginez contacted the debtors' attorney asking how she could get paid through the bankruptcy. (Declaration of Kevin T. Simon ("Simon Decl."), ¶ 6.)

On June 2, 2014, the debtors filed a motion to avoid Respondents' junior lien on their residence ("First Lien Avoidance Motion") [doc. 15]. The proof of service attached to the First Lien Avoidance Motion indicated service on Respondents at their address,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

"5526 Dunbar Dr., Oxnard, CA 93033-9111." (Doc. 15, at p. 39.)

On October 7, 2014, the debtors filed a second motion to avoid Respondents' junior lien ("Second Lien Avoidance Motion") [doc. 29]. The proof of service attached to the Second Lien Avoidance Motion indicated service on Respondents at their address, "5526 Dunbar Dr., Oxnard, CA 93033-9111." (Doc. 29, at p. 98.)

On September 24, 2015, the debtors filed a third motion to avoid Respondents' lien (the "Third Lien Avoidance Motion") [doc. 60]. The proof of service attached to the Third Lien Avoidance Motion indicated service on Respondents at their address, "5526 Dunbar Dr., Oxnard, CA 93033-9111." (Doc. 60, at p. 121.)

Because Respondents were served with notice of the debtors' bankruptcy on March 24, 2014 and several times thereafter, the Court will overrule Respondents' objection to the pending motion. The Court will grant the motion pursuant to its prior rulings listed below.

The debtors must submit the order within seven (7) days.

**Ruling from 4/10/18**

Pursuant to the Court's prior ruling, the debtors timely filed a supplemental declaration [doc. 112]. In light of the evidence submitted, the Court will grant in part and deny in part the motion. Jose P. Ginez and Corazon S. Ginez ("Respondents") must turn over funds in the amount of \$8,065.55 to the debtors **no later than 35 days** after entry of the order. In addition, Respondents must pay the debtors' attorney fees in the amount of \$6,320.84 **no later than 35 days** after entry of the order.

The debtors must submit the order within seven (7) days.

**Ruling from 3/13/18**

Grant in part and deny in part.

**I. BACKGROUND**

Wells Fargo Bank, N.A. ("Wells Fargo") is the beneficiary of the first deed of trust encumbering 23842 Erin Place, Canoga Park, California 91304 (the "Property"),

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras Chapter 13**

recorded on September 2, 2005 (the "First Trust Deed"). Jose P. Ginez and Corazon S. Ginez (together, "Respondents") are the original borrowers under the corresponding note and the trustors under the First Trust Deed. (Doc. 60, Exh. D.)

Wells Fargo is the beneficiary of the second deed of trust encumbering the Property, recorded on March 28, 2006 (the "Second Trust Deed"). Respondents are the original borrowers under the corresponding note and the trustors under the Second Trust Deed. (Doc. 60, Exh. C.)

On December 31, 2009, Romulo Gramata Bernardino and Ladinila Aspiras Bernardino (the "Debtors") purchased the Property from Respondents, pursuant to an "All-Inclusive Deed of Trust and Assignment of Rents" (the "Third Trust Deed"). Respondents are the beneficiaries and the Debtors are the trustors of the Third Trust Deed. On January 6, 2010, the Third Trust Deed was recorded. (Doc. 60, Exh. F.)

On March 24, 2014, the Debtors filed a chapter 13 petition. On December 17, 2014, the Court confirmed the Debtor's chapter 13 plan (the "Plan") [doc. 35]. The Plan provides for direct payment by the Debtors to Wells Fargo for arrearages owing on the First and Second Trust Deeds. Respondents were served with notice of the hearing on confirmation of the Plan.

On September 21, 2015, Ms. Ginez contacted the Debtor's bankruptcy attorney stating that she was a creditor of the estate and inquired as to how she would get paid through the bankruptcy. (Declaration of Kevin T. Simon ("Simon Decl."), ¶ 6.) On September 24, 2015, the Debtors filed a motion to avoid the Third Trust Deed (the "Lam Motion") [doc. 60]. On November 13, 2015, the Court entered an order approving the Lam Motion (the "Lam Order") [doc. 69]. The Lam Order provided that "no payments are to be made on the secured claim of the junior lienholder," and that the "claim of the junior lienholder is to be treated as an unsecured claim and is to be paid through the plan pro rata with all other unsecured claims." (Doc. 69, at p. 2.)

Because the Debtors purchased the Property with the Third Trust Deed, Respondents' name and address are on all loan documentation and statements from the First Trust Deed and the Second Trust Deed. (Simon Decl., ¶ 8.) The Debtors fell behind on the payment for the First Trust Deed, but continued to remit funds to Wells Fargo. After the Debtors defaulted on the First Trust Deed, Wells Fargo returned the mortgage

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

payments to Respondents rather than the Debtors. (*Id.*, ¶ 9.)

On February 16, 2016, Wells Fargo issued a statement reflecting unapplied funds and a payment reversal of \$7,065.55, as well as unapplied funds of \$2,000.00. (Simon Decl., Exh. B.). On February 26, 2016, Wells Fargo mailed Respondents a letter with a check enclosed for \$1,000.00 advising Respondents the funds were returned because it was an insufficient amount to reinstate the loan. (Simon Decl., Exh. D.). On March 1, 2016, Respondents cashed the \$1,000.00 check from Wells Fargo. (Simon Decl., Exh. E.)

During the bankruptcy case, Respondents provided the Debtors with an "IOU" note reflecting payments received from returned checks from Wells Fargo in the amount of \$8,065.55 and crediting the Third Trust Deed with the same amount. (Simon Decl., Exh. F.)

**II. RELEVANT LAW**

**A. Property of the Estate**

Pursuant to 11 U.S.C. § 541(a)(1),

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (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.

In addition, for chapter 13 debtors, pursuant to 11 U.S.C. § 1306(a):

Property of the estate includes, in addition to the property specified in section 541 of this title—

- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

of this title, whichever occurs first; and

- (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

**B. Turnover of Estate Property**

Pursuant to 11 U.S.C. § 542—

- (a) 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.

...

- (c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

Chapter 13 debtors have standing to assert the turnover right on the estate's behalf. *In re Lyle*, 324 B.R. 128 (Bankr. N.D. Cal. 2005) (chapter 13 debtor); *see also In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010). Property subject to a turnover action is limited to identifiable estate property and money due to the debtor without dispute. *See In re Newman*, 487 B.R. 193, 202 (9th Cir. B.A.P. 2013).

*Turnover rights are effective against an entity that possesses or controls estate*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras Chapter 13**

*property at any point during pendency of the bankruptcy case. Shapiro v. Henson, 739 F.3d 1198, 1199 (9th Cir. 2014). An entity need not actually possess the property when the turnover action is filed, provided the entity possessed estate property at some time during the bankruptcy case. See In re Newman, 487 B.R. at 202 (ordering a debtor who received and spent a tax refund postpetition to pay the chapter 7 trustee prorated portion of refund attributable to income earned prepetition).*

**C. Effect of Plan Confirmation**

Pursuant to 11 U.S.C. § 1327(a), "[t]he 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."

**D. Violation of the Automatic Stay**

11 U.S.C. § 362 provides in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—

- (1) The commencement or continuation, including the issuance or employment 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.
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Romulo Gramata Bernardino and Ladinila Aspiras**  
the estate;

**Chapter 13**

- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or a recover a claim against the debtor that arose before the commencement of the case;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor...

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). An affirmative duty is imposed on non-debtor parties to comply with the stay, and to remedy any violations, even if inadvertent, of the automatic stay. *In re Dyer*, 322 F.3d 1178, 1191–92.

11 U.S.C. § 362(k)(1) provides the following:

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Thus, a prima facie case under section 362(k) requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay. *In re Fernandez*, 227 B.R. 174, 181 (9th Cir. B.A.P. 1998).

The automatic stay "is designed to effect an immediate freeze of the status quo by precluding and nullifying post-petition actions . . . in nonbankruptcy forum against the debtor . . ." *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). "When there has been a violation of the automatic stay through the prosecution of state court litigation, the non-debtor parties have an affirmative duty to dismiss or stay the proceedings that give rise to the violation." *In re Garner*, 2011 WL 10676932, at \*3 (Bankr. E.D. Cal. June 8, 2011); see also *Eskanos & Adler, P.C.*



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, May 08, 2018

Hearing Room 301

11:30 AM

**CONT...**      **Romulo Gramata Bernardino and Ladinila Aspiras**  
*v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002).

**Chapter 13**

"The maintenance of an active collection alone adequately satisfies the statutory prohibition against 'continuation' of judicial actions." *Eskanos*, at 1215. "To comply with [the] 'affirmative duty' under the automatic stay, [the creditor] 'needed to do what he could to relieve the violation.'" *Garner*, at \*3 (quoting *Sternberg v. Johnston*, 595 F.3d 937, 945 (9th Cir. 2010)).

In *Garner*, a creditor obtained a judgment against the debtor during the pendency of the bankruptcy case, but before the creditor had received notice of the bankruptcy filing. *Id.*, at \*1–2. Upon obtaining notice, the creditor did nothing to reverse the prohibited actions taken while the automatic stay was in effect. *Id.* The bankruptcy court found a violation of the automatic stay:

That being said, there is no dispute that Teran knew about the bankruptcy and the automatic stay when he received the letter from the Debtors' attorney about two weeks after the Judgment was entered. At that point, Teran had an affirmative duty to "unwind" what had happened in the small claims court, but he failed to take any remedial action. Teran contends that he did not respond to the letter because he did not know what to do. However, that does not change the fact that the failure to act was itself a violation of the automatic stay.

*Id.* at \*4.

Under § 362(k)(1), above, an individual injured by a willful violation of the stay may recover "actual damages, including costs and attorneys' fees." 11 U.S.C. § 362(k)(1). The debtor "can recover as actual damages only those attorney fees related to enforcing the automatic stay and remedying the stay violation." *Sternberg*, 595 F.3d at 940; *see also In re Schwartz-Tallard*, 765 F.3d 1096, 1102 (9th Cir. 2014) (allowing the debtor to recover attorneys' fees incurred defending an appeal of the bankruptcy court's finding of a stay violation).

### **III. DISCUSSION**

#### **A. Turnover of Estate Property**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

Under § 541(a)(1) and § 1306(a)(2), the funds at issue are identifiable bankruptcy estate property and subject to turnover. In addition, the amount of the funds received by Respondents is not of inconsequential value to the estate. Respondents possessed and controlled estate property that the Debtors may use, sell, or lease during the pendency of the bankruptcy case.

In addition, Respondents had actual knowledge of the Debtors' bankruptcy case. On September 21, 2015, Ms. Ginez contacted the Debtors' attorney to inquire "how she should go about getting paid through the bankruptcy." Respondents also received actual notice of the Debtors' bankruptcy case because they were served notice of the Plan confirmation hearing, the Lam Motion and the Lam Order. As such, the turnover requirements under § 542 apply to Respondents.

The Plan was confirmed on December 17, 2014 and provided that the Debtors would pay Wells Fargo through the Plan to cure arrearages on the First Trust Deed and Second Trust Deed. Pursuant to § 1327, the provisions of the confirmed Plan bind each creditor, including Respondents. As such, pursuant to the confirmed Plan, Respondents were not entitled to retain the monies paid by the Debtors to Wells Fargo pursuant to the Plan.

Furthermore, pursuant to the Lam Order, no monies were to be paid to Respondents after the Third Trust Deed was avoided. Respondents' claim was to be paid through the Plan pro rata with all other unsecured claims. Thus, Respondents were not entitled to any of the monies returned by Wells Fargo.

The Motion seeks turnover of funds totaling \$10,065.55. However, the evidence attached to the Motion shows that Respondents cashed checks totaling \$8,065.55. Although there is a bank statement showing \$2,000 in unapplied funds, it is unclear whether Wells Fargo ever sent those funds to Respondents. Consequently, if Debtors seek turnover of this additional \$2,000, the Debtors must submit evidence showing that Respondents obtained possession of the other \$2,000.

**B. Violation of the Automatic Stay**

Here, Respondents violated the automatic stay by exercising control over property of the estate. It appears from the "IOU" note that Respondents were under the impression they could retain the money and credit it towards the debt owed to them.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

However, by retaining the checks and subsequently cashing them, Respondents exercised control over estate property in violation of § 362(a)(3). See *In re Lyle*, 324 B.R. 128; *In re Carlsen*, 63 B.R. 706, 711 (Bankr. C.D. Cal. 1986) (finding that the IRS violated both the automatic stay and the turnover requirements when it failed to return a check to the County after learning of the debtor's bankruptcy).

The violation of the automatic stay was willful because Respondents had actual knowledge of the Debtors' bankruptcy case at the time they retained the funds. "[T]he failure to return property of the estate with knowledge of the bankruptcy is a violation of both the automatic stay and of the turnover requirements of the Bankruptcy Code." *Abrams v. Sw. Leasing and Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-43 (9th Cir. B.A.P. 1991) (continuing retention by the creditor of repossessed vehicle after receiving notice of bankruptcy violated automatic stay); see also *In re Treasures, Inc.*, Case No. SC-13-1304, 2015 WL 925957, at \*21 (9th Cir. B.A.P. Mar. 3, 2015) (continuing retention of property of the bankruptcy estate violated the automatic stay). To preserve the "status quo" of the bankruptcy, Respondents would have had to return the funds to the Debtors or to Wells Fargo in order to relieve their violation. Respondents did not do so.

Accordingly, the Court will grant the Debtor's request for damages pursuant to § 362 (k)(1). The Debtors do not include a breakdown of damages incurred as a result of the willful violation of the stay. The Debtors must supplement the Motion with a statement of actual damages, fees, and costs incurred.

Notwithstanding the foregoing, it does not appear that Respondents' conduct warrants punitive damages. The Court will deny the Debtors' request for punitive damages.

#### **IV. CONCLUSION**

In light of the foregoing, the Court will grant in part and deny in part the Motion. **No later than March 27, 2018**, the Debtors must file a supplemental declaration with (i) evidence that Respondents possessed monies in excess of \$8,065.55, and (ii) evidence regarding actual damages, fees, and costs incurred while litigating this matter.

The Debtors must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras**

**Chapter 13**

**#64.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w)  
to modify plan or suspend plan payments

Docket 107

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Romulo Gramata Bernardino

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Ladinila Aspiras Bernardino

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#65.00** Motion for turnover of estate property under 11 U.S.C. section 542

Docket 82

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On September 8, 2014, Yianis Newton Heathington and Celestine Lejune Heathington ("Debtors") filed a voluntary chapter 13 petition. U.S. Bank National Association, serviced by Nationstar Mortgage LLC ("Nationstar"), is the beneficiary of the first deed of trust encumbering 17950 Delano Street, Encino, California 91316 (the "Property"). On October 29, 2014, Nationstar filed Proof of Claim 3-1 ("Claim 3-1") with \$140,708.93 in prepetition arrearages.

On May 18, 2015, the Court confirmed Debtors' second amended chapter 13 plan (the "Plan") [doc. 52]. Pursuant to the terms of the Plan, the chapter 13 trustee (the "Trustee") was to make monthly distributions to Nationstar to cure the prepetition arrearages.

On or about October 12, 2016, Debtors obtained a loan modification with Nationstar (the "Loan Modification Agreement"). On February 2, 2017, Debtors filed a motion to approve the Loan Modification Agreement [doc. 61]. On March 2, 2017, the Court granted the motion to approve the Loan Modification Agreement [doc. 62]. Pursuant to the terms of the Loan Modification Agreement, Nationstar's prepetition arrears were reduced from \$140,708.93 to \$41,265.26 [doc. 82, Exh. 1]. On May 19, 2017, Nationstar amended Claim 3-1 reflecting this decrease in arrearages [doc. 82, Exh. 2].

Based on Debtors' account ledger, the Trustee overpaid Nationstar by \$14,272.40. Debtors filed a motion for turnover of estate property (the "Motion") asking that the \$14,272.40 overpayment be refunded to the Trustee for disbursement to other

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Yuanis Newton Heathington and Celestine Lejune**  
creditors with allowed claims [doc. 82].

**Chapter 13**

**II. RELEVANT LAW**

**A. Property of the Estate**

Pursuant to 11 U.S.C. § 541(a)(1),

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

- (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.

In addition, for chapter 13 debtors, pursuant to 11 U.S.C. § 1306(a):

Property of the estate includes, in addition to the property specified in section 541 of this title—

- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and
- (2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

**B. Turnover of Estate Property**

Pursuant to 11 U.S.C. § 542—

- (a) 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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

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.

...

- (c) Except as provided in section 362(a)(7) of this title, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (d) of this section, to an entity other than the trustee, with the same effect as to the entity making such transfer or payment as if the case under this title concerning the debtor had not been commenced.

Chapter 13 debtors have standing to assert the turnover right on the estate's behalf. In *re Lyle*, 324 B.R. 128 (Bankr. N.D. Cal. 2005) (chapter 13 debtor); see also *In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010). Property subject to a turnover action is limited to identifiable estate property and money due to the debtor without dispute. See *In re Newman*, 487 B.R. 193, 202 (9th Cir. B.A.P. 2013).

Turnover rights are effective against an entity that possesses or controls estate property at any point during pendency of the bankruptcy case. *Shapiro v. Henson*, 739 F.3d 1198, 1199 (9th Cir. 2014). An entity need not actually possess the property when the turnover action is filed, provided the entity possessed estate property at some time during the bankruptcy case. See *In re Newman*, 487 B.R. at 202 (ordering a debtor who received and spent a tax refund postpetition to pay the chapter 7 trustee prorated portion of refund attributable to income earned prepetition).

### **III. DISCUSSION**

Under § 541(a)(1) and § 1306(a)(2), the funds at issue are identifiable bankruptcy estate property and subject to turnover. In addition, the amount of the funds received by Nationstar is not of inconsequential value to the estate. Nationstar possessed and controlled estate property that the Trustee may use, sell, or lease during the pendency of the bankruptcy case. In addition, Nationstar had actual knowledge of Debtors' bankruptcy case. Nationstar filed Claim 3-1 and received actual notice of Debtors'



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Yuanis Newton Heathington and Celestine Lejune Chapter 13**

bankruptcy case because it was served notice of the Plan confirmation hearing. As such, the turnover requirements under § 542 apply to Nationstar.

The Plan was confirmed on May 18, 2015, and provided that Debtors would pay Nationstar through the Plan to cure arrearages on the Property. Pursuant to the provisions of the Loan Modification Agreement, the amount of arrearages was reduced from \$140,708.93 to \$41,265.26. As such, Nationstar was not entitled to retain the monies paid by the Trustee to Nationstar over and above \$41,265.26. Consequently, the Court will grant the Motion.

**IV. CONCLUSION**

In light of the foregoing, the Court will grant the Motion.

Debtors must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 08, 2018**

**Hearing Room 301**

11:30 AM

**1:15-11600 Veronica Solorio**

**Chapter 13**

**#66.00** Motion to vacate dismissal

Docket 43

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Veronica Solorio

Represented By  
Ruben Fuentes

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 3/7/18; 4/11/18

Docket 45

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, May 09, 2018

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

fr. 4/18/18

Docket 72

\*\*\* VACATED \*\*\* REASON: APO lodged on 5/7/17 and order approved  
for entry.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

9:30 AM

1:18-10465 Ziv Kanon

Chapter 13

#3.00 Motion for relief from stay [AN]

MARC AND DORIS WURZEL  
VS  
DEBTOR

Docket 34

**Tentative Ruling:**

Deny as moot.

**I. BACKGROUND**

On September 12, 2016, Ziv Kanon ("Debtor") filed a chapter 13 petition (the "First Case") [1:16-bk-12639-MB]. On July 7, 2017, the First Case was dismissed at the confirmation hearing because Debtor failed to make payments to the trustee. The court imposed a 180-day bar, which prohibited Debtor from filing any new bankruptcy petition within 180 days of the date of entry of the order [1:16-bk-12639-MB, doc. 68].

On February 21, 2018, at approximately 12:45 p.m., Debtor filed a chapter 13 petition (the "Second Case"). On March 6, 2018, Debtor filed a motion to impose or continue the automatic stay (the "Motion to Continue the Stay") [doc. 8]. On March 21, 2018, Debtor filed a motion to withdraw the Motion to Continue the Stay [doc. 21].

In his schedule A/B, Debtor stated that he operates a sole proprietorship repair and resale business specializing in heavy equipment such as forklifts called HD World Equipment [doc. 10, p. 16]. Debtor operated his business on premises owned by Mark and Doris Wurzel and the Wurzel Family Trust ("Wurzel"). Wurzel previously obtained an unlawful detainer judgment against Debtor, which was stayed multiple times pursuant to stipulations between Debtor and Wurzel [doc.43, Declaration of Ziv Kanon ("Kanon Decl."), ¶ 5].

Pursuant to a stipulation to continue the stay of the unlawful detainer judgment (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ziv Kanon**

**Chapter 13**

"October Stipulation") [doc. 34, Exh. 11], Debtor made payments to continue occupying the property through February 15, 2018. The October Stipulation stated that "anything left behind after moveout [sic] will belong to [Wurzel] and may be disposed of without notice." On October 5, 2017, the Superior Court of California, County of Los Angeles approved the October Stipulation and entered it as a judgment [doc. 34, Exh 11].

When the move-out date passed, Wurzel had Debtor evicted by the sheriff on February 21, 2018 at 8:30 a.m. [doc. 43, Kanon Decl., ¶ 7] (doc. 34, Exh. 12, which is the sheriff's report of eviction, states that the lockout occurred on February 20, 2018, Wurzel and Debtor state that the eviction actually occurred on February 21). Debtor alleges that his construction equipment (the "Equipment") was on Wurzel's property at the time of the lockout.

On April 18, 2018, Wurzel filed a motion for relief from the automatic stay to proceed with the action in the nonbankruptcy forum (the "Motion") [doc. 34].

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 362(c)(3)—

- (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)-
  - (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
  - (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ziv Kanon**

**Chapter 13**

expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and. . . .

11 U.S.C. § 362(c)(3).

On February 21, 2018, Debtor filed the Second Case, and the First Case was pending within the preceding one-year period but was dismissed. Thus, 11 U.S.C. § 362(c)(3) applies to Debtor. Pursuant to § 362(c)(3), the automatic stay terminated on March 22, 2018. Debtor filed the Motion to Continue the Stay, but subsequently withdrew it. Consequently, there is no automatic stay in place, and Wurzel is free to proceed with the unlawful detainer action against Debtor. *See In re Reswick*, 446 B.R. 362, 372 (B.A.P. 9th Cir. 2011) ("The history of section 362(c)(3)(A) indicates that Congress intended it to deter second filings. For this provision to have its intended effect, it must be interpreted as terminating the automatic stay in its entirety [as to the debtor, the debtor's property, and property of the estate].").

**III. CONCLUSION**

Because there is no automatic stay in Debtor's case, the Court will deny the motion is moot.

Wurzel must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

9:30 AM

1:16-11630 Salena G Ellerkamp

Chapter 13

#4.00 Motion for relief from stay [RP]

US BANK TRUST N.A.  
VS  
DEBTOR

Docket 68

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Salena G Ellerkamp

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

9:30 AM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#5.00 Motion for relief from stay [PP]

DIAMLER TRUST  
VS  
DEBTOR

Docket 194

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mehri Akhlaghpour**

Edward M Wolkowitz  
Jeffrey S Kwong

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#6.00** Order to Show Cause why the Court should not dismiss this  
adversary proceeding

fr. 4/4/18

Docket 32

**Tentative Ruling:**

See calendar no. 7.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#7.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17; 2/14/18; 4/4/18

Docket 1

**Tentative Ruling:**

On April 25, 2018, Duane J. Van Dyke ("Plaintiff") filed a unilateral status report (the "Status Report") [doc. 39]. In the Status Report, Plaintiff stated that on May 18, 2018, the probate court will hold a hearing to name a personal representative for the estate of the deceased defendant, Hermann Muennichow ("Defendant").

On May 2, 2018, chapter 7 trustee David Seror (the "Trustee") filed a response to the Status Report (the "Response") [doc. 40]. In the Response, the Trustee noted, among other things, that Plaintiff did not timely file a proof of claim in Defendant's bankruptcy case. On December 12, 2017, the Trustee filed a *Notification of Asset Case*, which included an order fixing a claims bar date of March 19, 2018 [doc. 44]. Plaintiff's counsel received notice of the order fixing a claims bar date via NEF. Because Plaintiff did not file a timely proof of claim, Plaintiff may not have standing to pursue the pending adversary proceeding seeking nondischargeability of debt.

The Court may continue this matter to allow the parties to file supplemental briefing as to the issues raised in the Response.

**Tentative Ruling from 4/4/18**

**I. BACKGROUND**

On March 16, 2017, Hermann Muennichow ("Debtor") filed a voluntary chapter 7 petition. Prior to the petition date, Duane J. Van Dyke ("Plaintiff") had initiated a state court action against Debtor and his nondebtor spouse seeking damages for fraud, breach of fiduciary duty, imposition of constructive trust and conversion. The state

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

court action was stayed when Debtor filed the chapter 7 petition.

On June 12, 2017, Plaintiff initiated this adversary proceeding against Debtor. The complaint seeks nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), (a)(6) and (a)(14) and objects to Debtor's receipt of a discharge pursuant to 11 U.S.C. §§ 727(c), (d) and (e) (the "Complaint") [doc. 1]. On August 22, 2017, Debtor filed an answer to the Complaint [doc. 13].

On November 16, 2017, the Court issued an order to appear and show cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC for Failure to Prosecute") [doc. 22]. On November 17, 2017, Plaintiff filed a response to the OSC for Failure to Prosecute mentioning the "recent death of the debtor" (the "Response to the OSC") [doc. 24 p. 3, lines 2-3].

On December 14, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 27]. On December 14, 2017, the Scheduling Order was served on the chapter 7 trustee, Plaintiff's counsel, Debtor's counsel and the United States Trustee through NEF [doc. 28]. On December 16, 2017, the Scheduling Order was served on Plaintiff and Debtor by first class mail [doc. 28]. In the Scheduling Order, the Court stated:

The Court being apprised of the death of the Debtor Hermann Muennichow and it appearing that the Plaintiff seeks to move forward with this adversary proceeding,

It is hereby ordered that the status conference is continued to February 14, 2018, at 1:30 p.m. in Courtroom 301 of the above-captioned Court; and,

It is further ordered that a status conference report be filed by January 31, 2018 to address, in addition to all other matters required in the report, *the status of any motion to substitute a party in place of the deceased debtor pursuant to Federal Rules of Procedure Rule 25(a)*.

(emphasis added).

On February 1, 2018, Plaintiff filed a joint status report (the "Status Report") [doc. 29]. In the Status Report, Plaintiff stated: "Debtor recently died and a motion to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

substitute personal representative will need to be filed shortly. No will or trust has been located and no [p]robate has been commenced." [doc. 29, p. 2, ¶ 5]. Plaintiff also stated that he would not know when he would be ready for trial until a personal representative was appointed and he was waiting for probate to open [doc. 29, p. 2, ¶¶ 1-2].

On February 6, 2018, Stuart R. Simone, Debtor's counsel, filed a declaration regarding the termination of the attorney client relationship (the "Simone Declaration") [doc. 30]. In the Simone Declaration, Mr. Simone states that Debtor died on November 11, 2017. Attached is a copy of the death certificate [doc. 30, p. 2, ¶ 3 and Exh. A].

On February 15, 2018, the Court entered an order to show cause why the Court should not dismiss the adversary proceeding because of Debtor's death (the "OSC"). The OSC required Plaintiff to appear and explain how the Court could grant effective relief in this adversary proceeding [doc. 32]. The OSC set a response deadline of March 21, 2018.

On March 21, 2018, Plaintiff filed a response and declaration in reply to the Court's OSC (the "2018 Response") [doc. 35]. In the 2018 Response, Plaintiff requests that the Court abstain from hearing the adversary proceeding under 11 U.S.C. § 1334(c) (1). However, Plaintiff also asserts that a determination of Plaintiff's claims in this proceeding remains relevant because of a dispute regarding certain life insurance proceeds. Allegedly Plaintiff and Debtor's spouse, Helayne Muennichow ("Mrs. Muennichow"), each claim an interest in these policy proceeds. (EN1)

As of the date the Response was filed, probate had not opened, nor had there been an appointment of any personal representative by any court [doc. 35, p. 2, ¶ 6].

## **II. DISCUSSION**

### ***A. Federal Rule of Civil Procedure ("Rule") 25***

"In an adversary proceeding, specific procedural steps are required if the deceased, including a chapter 7 debtor, is a party." *In re Eads*, 135 B.R. 380, 384 (Bankr. E.D. Cal. 1991). The mechanics are set out in Rule 25, which applies in adversary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

proceedings pursuant to Fed. R. Bankr. P. 7025.

Pursuant to Rule 25(a)—

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

...

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

In *Barlow v. Ground*, the Ninth Circuit Court of Appeals held that Rule 25 required two affirmative steps to trigger the running of the ninety-day period. 39 F.3d 231, 233 (9th Cir.1994). "First, a party must formally suggest the death of the party upon the record." *Id.* "Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute." *Id.* "A non-party successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons." *Id.*

As a preliminary matter, there are four documents in the record in which Debtor's death is acknowledged: (1) the Response to the OSC [doc. 24]; (2) the Status Report [doc. 29]; (3) the Simone Declaration [doc. 30]; and (4) the Scheduling Order [doc. 27]. Of these documents, only the Scheduling Order is sufficiently formal to trigger the running of the 90-day period. *See In re Brand*, 545 B.R. 37, 40 (Bankr. C.D. Cal. 2016) ("the notice of death must be sufficiently *formal* in order to trigger the running of the 90-day period") (emphasis in original); *Acri v. Int'l Ass'n of Machinists and Aerospace Workers*, 595 F.Supp. 326, 330 (N.D. Cal 1984) (the notice must be more than a mere mention of the death in a court proceeding or pleading).

In *Barlow*, the Court of Appeals held that where a nonparty representative is clearly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

1:30 PM

CONT... **Hermann Muennichow**

Chapter 7

known at the time notice of death is made, Rule 25 requires service upon that nonparty representative pursuant to Rule 4. 39 F.3d at 233. In the 2018 Response, Plaintiff states that Mrs. Muennichow, who is not a party to this proceeding, asserts an interest in Debtor's life insurance policy proceeds. Consequently, Mrs. Muennichow likely has an interest in contesting this nondischargeability action.

As a result, in order to trigger the beginning of the statutory period, it appears appropriate that any notice of death be served on Mrs. Muennichow. *See Rende v. Kay*, 415 F.2d 983, 986 (D.C. Cir. 1969) (statement of death must "identify the representative or successor of an estate who may be substituted as a party for the deceased before Rule 25(a)(1) may be invoked"). Because the Scheduling Order was not served on Mrs. Muennichow, it appears that it is not sufficient to trigger the running of the 90-day period in Rule 25.

***B. Abstention***

Pursuant to 11 U.S.C. § 305(a), a bankruptcy court, after notice and a hearing, may dismiss a case "or may suspend all proceedings in a case under this title, at any time if... the interests of creditors and the debtor would be better served by such dismissal or suspension." Title 28, U.S.C. § 1334(c)(1) states that "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

The Ninth Circuit Court of Appeals has articulated twelve factors for consideration when assessing the merits of abstention:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

1:30 PM

CONT...

**Hermann Muennichow**

**Chapter 7**

core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

*In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990). "No single factor is dispositive, and the decision does not turn on a counting of the number of factors on each side." *In re Lazar*, 200 B.R. 358, 373 (Bankr. C.D. Cal. 1996).

The overwhelming weight of the *Tuscon* factors is against abstention. The Complaint asserts causes of action under 11 U.S.C. §§ 523 and 727. This Court has exclusive jurisdiction over core bankruptcy matters, which include nondischargeability actions. Plaintiff has not asserted any state law causes of action and has no right to a jury trial. Moreover, Plaintiff maintains that there is a dispute with regard to entitlement to Debtor's life insurance policy proceeds and that a finding of nondischargeability remains relevant. Because this Court has exclusive jurisdiction to determine the claims asserted in the Complaint, abstention is not appropriate.

### III. CONCLUSION

In light of the foregoing, Plaintiff should be prepared to inform the Court if and how he intends to continue prosecuting the Complaint.

### ENDNOTES

1. On July 28, 2017, David Seror, the chapter 7 trustee appointed in Debtor's case, filed an adversary complaint against Debtor and Mrs. Muennichow seeking, among other things, to avoid fraudulent transfers under 11 U.S.C. § 548 and denial of discharge under 11 U.S.C. § 727 [1:17-ap-01069-VK]. In her answer, Mrs. Muennichow stated that she and Debtor have been legally separated at all times relevant to that adversary proceeding [doc. 7, ¶ 10]. In connection with that proceeding, the chapter 7 trustee has noted: "Debtor and Defendant Helayne were in the process of obtaining a divorce at the time of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Hermann Muennichow**

**Chapter 7**

the Debtor's death. . . . Counsel for Debtor's wife has stated in Court that she will not and cannot serve as the personal representative for Debtor's decedent's estate herein" [doc. 35, Declaration of David Seror, ¶ 3].

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #8.00** Pretrial conference re complaint
- 1) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)]
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 3/13/18 setting pre-trial conference for 9/12/18 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

Helayne Muennichow

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

1:30 PM

**1:17-11095 Grigor Chilingaryan**

**Chapter 7**

Adv#: 1:17-01092 Merchants Acquisition Group, LLC v. Chilingaryan

**#9.00** Status conference re: complaint to determine nondischargeability of debt (11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B))

fr. 3/7/18; 4/11/18

Docket 1

\*\*\* VACATED \*\*\* REASON: Default judgment entered on 5/1/18 [doc. 27]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Grigor Chilingaryan

Represented By  
Khachik Akhkashian

**Defendant(s):**

Grigor Chilingaryan

Pro Se

**Plaintiff(s):**

Merchants Acquisition Group, LLC

Represented By  
Richard W Snyder

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

1:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:18-01017 Weil v. Cazares

**#10.00** Status conference re: complaint for avoidance and recovery of preferential transfer

**Ex parte motion to continue hearing filed 4/27/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 5/1/18 continuing hearing to 8/8/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Andrew Edward Smyth  
Stephen S Smyth

**Defendant(s):**

Gina Cazares

Pro Se

**Plaintiff(s):**

Diane C. Weil

Represented By  
C John M Melissinos

**Trustee(s):**

Diane C Weil (TR)

Represented By  
C John M Melissinos

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#11.00** Motion to dismiss plaintiff's first amended complaint

Docket 26

**Tentative Ruling:**

For the reasons set forth below, the Court will grant the *Motion to Dismiss Plaintiff's First Amended Complaint, With Prejudice* (the "Motion") [doc. 26] in part and deny the Motion in part. The Court will grant the Motion, without leave to amend, as to Plaintiff's causes of action under §§ 523(a)(4) and (a)(19). The Court will deny the Motion as to Plaintiff's allegations regarding Defendants' allegedly false oaths concerning the value of their businesses under § 727(a)(4)(A), and will grant with leave to amend regarding Defendants' business income, as reflected in their Schedule I, as compared to the income disclosed in Defendants' monthly operating reports, filed with the Court.

**I. BACKGROUND**

The Court provided additional background in its ruling on March 7, 2018 [doc. 17]. Some facts are repeated here.

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Defendants") filed a voluntary chapter 11 petition. On November 27, 2017, Pogo Araik Melkonian ("Plaintiff") filed a complaint against Defendants (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A). Through the Complaint, Plaintiff made a number of allegations regarding Defendants' misconduct. The central thrust of these allegations is that Defendants were co-conspirators with George Pilavjian ("Pilavjian") and Sona Chukhyan ("Chukhyan") (Pilavjian and Chukhyan together, "Criminals") in a scheme to induce loans fraudulently from Plaintiff and others.

On January 3, 2018, Defendants filed a motion to dismiss the Complaint with prejudice (the "First Motion to Dismiss") [doc. 10]. On March 19, 2018, the Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

entered an order granting in part and denying in part the First Motion to Dismiss ("Dismissal Order") [doc. 21]. Specifically, the Dismissal Order states:

- a. The Court will GRANT the Motion, *without* leave to amend, as to Plaintiff's causes of action under §§ 523(a)(2) and (a)(6);
- b. The Court will GRANT the Motion, *with* leave to amend, as to Plaintiff's cause of action for defalcation under § 523(a)(4);
- c. The Court will DENY the Motion as to Plaintiff's allegations regarding the valuation of Defendants' businesses under § 727(a)(4)(A); and
- d. The Court will GRANT the Motion, *with* leave to amend, regarding Defendants' allegedly false oaths concerning their Schedule J expenses, current business income, electronics and jewelry.

(emphasis in original) *Id.* at p. 2, lines 7-15.

The Dismissal Order provided that Plaintiff had 14 days to file and serve an amended complaint. It also provided that "[i]f Plaintiff requests to include a cause of action under § 523(a)(19) against Defendants, Plaintiff must also file and serve within 14 days following the entry of this order a brief on why this section is applicable, *and whether this cause of action is being timely asserted.* (emphasis in original) *Id.* at ¶ 4.

On April 2, 2018, Plaintiff timely filed and served a first amended complaint against Defendants (the "FAC"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(4) and (a)(19) and for denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A) [doc. 23]. On the same day, Plaintiff filed a brief regarding why § 523(a)(19) is applicable and whether this cause of action is being timely asserted (the "Brief") [doc. 24].

In the FAC, Plaintiff makes the same allegations regarding Defendants' misconduct as he did in the Complaint. The central thrust of these allegations is that Defendants were co-conspirators with Criminals in a scheme to induce investments fraudulently from Plaintiff and others. (In the Complaint, Plaintiff refers to the transactions as loans, while in the FAC, Plaintiff refers to the transactions as investments.) However, Plaintiff does assert new allegations and facts, as detailed below.

When Defendants made representations about their experience in the real



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

estate market, they were soliciting an investment from Plaintiff [doc. 23, p. 14, ¶ 65]. The purpose of the investment was to purchase real property, and Plaintiff was to be paid back through profits realized from the sale. *Id.* at pp. 14-15, ¶ 65. These transactions constituted the sale of a security pursuant to Federal and state law. *Id.*

Defendant Yegishe, in order to assure Plaintiff his investment was safe, took Plaintiff to a commercial property located on Ventura and Tampa, and represented that he owned the property. *Id.* at p. 3, ¶ 15. Defendant Yegishe further assured Plaintiff his money was safe by confirming on many occasions that he guaranteed return of Plaintiff's investment with the promised gain and that he had a real property with substantial equity to cover the investment. *Id.* at p. 4, ¶ 15.

In December 2008, Defendants through their broker/agent Hayg Terzian, delivered an executed deed of trust in the name of Plaintiff's son on property located in La Canada, California. *Id.* at p. 4, ¶ 19. Additionally, Defendants instructed their agents Varujan and Mary Pehlevanian to deliver Plaintiff a \$25,000 check. *Id.* The check was issued by Mary Pehlevanian and the bank returned it for insufficient funds. *Id.*

Plaintiff further asserts that the September 2009 note executed by George Plavjian and the December 2009 note executed by George Plavjian on behalf of JBA were allegedly secured by a deed of trust held to Hughey Financial Inc., a California corporation, as trustee. *Id.* at p. 6, ¶ 24.

Before Defendants sold the security to Plaintiff, Plaintiff was a customer at Defendants' hair salon and Defendants only sought out Plaintiff in order for him to make financial investments into their real estate scheme. *Id.* at p. 8, ¶ 36. Defendants actively solicited investments from customers at the hair salon for their real estate development projects. *Id.* Defendants did not provide Plaintiff with detailed information about the investments, including the risks associated with the project or a prospectus on the investment. *Id.* at p. 8, ¶ 37.

Defendants' monthly operating reports ("MORs") signed under penalty of perjury reveal significant inconsistencies with respect to their Schedules and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

their declaration of current and postpetition income and expenses filed in support of their chapter 11 plan of reorganization and disclosure statement. *Id.* at p. 11, ¶ 49. Defendants Schedule I states their combined monthly income is \$8,508.46. *Id.* at pp. 11-12, ¶ 50. However, their MORs show an average monthly income of \$4,777.97. *Id.* at p. 12, ¶ 51. Defendants do not seem to disclose the income from the cabinet business, the hair salon business or both. *Id.* at p. 12, ¶ 52.

On February 28, 2017, Debtors filed their chapter 11 plan of reorganization and disclosure statement in support thereof [docs. 45, 46]. Defendants' declaration of current and postpetition income and expense contains the same expenditures as stated above, which are not reflected in the MORs. *Id.* at p. 13, ¶ 54.

On April 18, 2018, Defendants filed a response to the Brief (the "Response") [doc. 25]. On the same day, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 26].

In the Motion, Defendants assert that: (A) Plaintiff's conclusory allegations fail to state a cause of action under § 523(a)(4); (B) the applicable statute of limitations conclusively bars the § 523(a)(4) cause of action; (C) Plaintiff cannot meet the requirements of § 523(a)(19); (D) Plaintiff's conclusory allegations fail to state a cause of action under § 727(a)(4)(A); (E) the Court should grant the Motion without leave to amend because the defects in the FAC cannot be cured with an amendment; and (F) the revisions in the FAC are not genuine and it a "sham pleading." Plaintiff opposed the Motion [doc. 29].

On May 2, 2018, Plaintiff filed a reply brief in support of the Brief (the "Reply Brief") [doc. 31]. On May 3, 2018, Defendants filed a motion to strike the Reply Brief (the "Objection") [doc. 32].

## **II. DISCUSSION**

### ***A. Federal Rule of Civil Procedure 12(b)(6)***

Defendants argue that all three causes of action in the complaint should be dismissed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

for failure to state a claim pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6).

Courts grant motions to dismiss under FRCP 12(b)(6) where the Complaint fails to state enough factual content to allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)). In addition, courts do not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Id.* When ruling on a Rule 12(b)(6) motion, the court  cannot consider "new" facts alleged in a plaintiff's opposition papers. *See Schneider v. California Dept. of Corrections*, 151 F3d 1194, 1197 (9th Cir. 1998).

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 between possibility and plausibility of entitlement to relief.

*Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (internal quotations and citations omitted).

For instance, in *Iqbal*, the Supreme Court held that the plaintiff had not alleged a plausible claim against Attorney General John Ashcroft and FBI Director Robert Mueller where the plaintiff alleged only that these defendants "knew of, condoned, and willfully and maliciously agreed to subject" the plaintiff to confinement "as a matter of policy...." *Id.*, at 680. These allegations "amount[ed] to nothing more than a formulaic recitation of the elements...." *Id.*, at 681 (internal quotations omitted). *See also Blantz v. California Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 927 (9th Cir. 2013) ("[C]ommon sense requires us to reject the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

allegation that the Chief Medical Officer for the state-wide prison system, who sits on the Governing Body, was personally involved in the decision to terminate Blantz as an independent contractor nurse at Calipatria state prison or to give her a negative job reference.").

Pursuant to FRCP 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Where a complaint is insufficient under FRCP 12(b)(6), a court has discretion to grant the plaintiff leave to amend. Under FRCP 15(a)(2) "the court should freely give leave [to amend] when justice so requires." However, dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

***B. 11 U.S.C. § 523(a)(4)***

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); see also *In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; see also *In re Stern*, 403 B.R. 58, 66 (Bankr. C.D.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit Court of Appeals has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at fn. 7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

Under § 523(a)(4), debts related to "defalcation while acting in a fiduciary capacity," are nondischargeable. "Defalcation is defined as 'misappropriation of trust funds or money held in any fiduciary capacity.'" *In re Lewis*, 97 F.3d 1182, 1187 (9th Cir. 1996).

Defalcation "includes a culpable state of mind requirement akin to that which accompanies application of the other term in the same statutory phase." *Bullock v. Bankchampaign, N.A.*, 133 S.Ct. 1754, 1757 (2013). This state of mind is one "involving knowledge of, or gross recklessness in respect to, the improper nature of the relevant fiduciary behavior." *Id.* "Thus, where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong." *Id.*, at 1759. Included as "intentional" is "not only conduct that the fiduciary knows is improper, but also reckless conduct of the kind that the criminal

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

**Chapter 11**

law often treats as the equivalent." *Id.* Thus, "[w]here actual knowledge of wrongdoing is lacking," the court should "consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and justifiable risk' that his conduct will turn out to violate a fiduciary duty." *Id.* "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 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.'" *Id.* (emphasis in original).

Under the authorities above, Plaintiff did not allege a fiduciary relationship as defined under § 523(a)(4). As to defalcation, a preliminary requirement is the existence of an express trust. However, the FAC contains no facts alleging that such a trust ever existed. Plaintiff never alleges that there was intent to create a trust, a trustee, trust property or a proper legal purpose.

Further, § 523(a)(4) applies "only to a debt created by a person who was already a fiduciary when the debt was created." *Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 333, 55 S.Ct. 151, 79 L.Ed. 393 (1934) (internal quotation marks omitted). Plaintiff did not allege facts in the FAC showing that Defendants were fiduciaries before the debt to Plaintiff was created.

Consequently, Plaintiff failed to sufficiently state a claim under § 523(a)(4). Because Plaintiff failed to cure any of the deficiencies in the Complaint, the Court will grant the Motion with prejudice with respect to Plaintiff's § 523(a)(4) claim.

***C. 11 U.S.C. § 523(a)(19)***

Pursuant to 11 U.S.C. § 523(a)(19), a bankruptcy discharge does not discharge an individual debtor from any debt that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; *and*

(B) results, before, on, or after the date on which the petition was filed, from—

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

(emphasis added).

"To establish that exception to discharge, the debt must (1) be 'for' a securities law violation or fraud in connection with a sale of a security, and (2) 'result from' some judicial or administrative proceeding or a settlement agreement. *Tradex Glob. Master Fund SPC LTD v. Chui*, 702 F. App'x 632, 633 (9th Cir. 2017). "Plaintiff must establish both parts by a preponderance of evidence." *Michael Williams v. Rumio Sato (In re Rumio Sato)*, 512 B.R. 241, 251 (Bankr. C.D. Cal. 2014).

"A threshold question is whether § 523(a)(19)(B) requires that Plaintiff's claim be first memorialized in an order or settlement outside of this Court." *Sato*, 512 B.R. at 251-52. "There is a split in authority on this question." *Id.*

"The narrower view holds that § 523(a)(19)(B) requires the debt to be first memorialized in a settlement or order by a nonbankruptcy forum. The more expanded view holds that the bankruptcy court can determine the liability, damages, and dischargeability of the debt for securities violations and securities fraud and issue its own judgment to satisfy § 523(a)(19)(B)." *Sato*, 512 B.R. at 251-52 (internal citations omitted); *see also One Longhorn Land I, L.P. v. Presley*, 529 B.R. 755, 761 (C.D. Cal. 2015).

Plaintiff's claim is not memorialized in an order or settlement outside of this Court. Defendants urge the Court to interpret § 523(a)(19)(B) according to the narrower view. However, the Court declines to interpret § 523(a)(19)(B) at this time because, as

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

**Chapter 11**

discussed below, Plaintiff's theories of recovery under § 523(a)(19) are time-barred.

Under § 523(a)(19)(A), Plaintiff must show the debt was for a securities law violation or fraud in connection with a sale of a security. Plaintiff cites *Sato* in support of his position that he has a strong § 523(a)(19) claim. However, *Sato* is distinguishable because the court in *Sato* found there was fraud in connection with the sale of a security. The court did not determine whether there was a violation of a Federal or California securities law. In regards to § 523(a)(19)(A)(ii), this Court has already stated that to the extent Plaintiff presents any cause of action based on fraud, that cause of action is time-barred [doc. 17, p. 8]. Thus, Plaintiff must prove there was a violation of any of the Federal or California securities laws.

***D. Statute of Limitations***

A party seeking to have its debt declared nondischargeable must first establish that debt under the applicable state statute of limitations. *In re DiBenedetto*, 560 B.R. 531, 537 (Bankr. C.D. Cal. 2016). "However, the question of the dischargeability of the debt under the Bankruptcy Code is a distinct issue governed solely by the limitations periods established by bankruptcy law." *In re Banks*, 225 B.R. 738, 744-45 (Bankr. C.D. Cal. 1998), *aff'd*, 246 B.R. 452 (B.A.P. 9th Cir. 1999), *aff'd sub nom. Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862 (9th Cir. 2001), and *aff'd*, 246 B.R. 452 (B.A.P. 9th Cir. 1999).

"[A] debt upon which the state statute of limitations . . . has run prior to the filing of the bankruptcy case has been "established" pre-petition if the creditor has taken a timely affirmative act which is necessary to the creditor's ability to collect the debt in a manner provided for by law." *Banks*, 225 B.R. at 745. "[T]here is no requirement that the allegations of a complaint filed in state court prior to a debtor filing a petition in bankruptcy correspond to the elements of the grounds contained in § 523(a) of the Bankruptcy Code." *Id.* "Otherwise, plaintiffs in state court would be required to anticipate the bankruptcy of every defendant and litigate every conceivable issue under § 523(a) in the event a defendant should subsequently file bankruptcy." *Id.*

Plaintiff correctly asserts that under FRBP 4007 and § 523(c), a complaint for nondischargeability of debt pursuant to a § 523(a)(19) claim may be filed at any time and is not subject to the sixty day statute of limitations following the § 341(a) meeting. Thus, the FAC is timely under FRBP 4007. *See In re Pierce*, 563 B.R. 698,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Yegiya Kutyan**  
707 (Bankr. C.D. Ill. 2017).

**Chapter 11**

Plaintiff also correctly asserts in the Reply Brief that "*after* determining that the debt was successfully established pre-petition, the state statute of limitations becomes immaterial, as dischargeability issues are within the purview of the bankruptcy court's exclusive jurisdiction and issues relating thereto are to be decided within the confines of the bankruptcy court as provided by Congress." (emphasis added) *Banks*, 225 B.R. at 746. However, Plaintiff did not successfully establish the debt prepetition.

The timeliness of the FAC to determine nondischargeability under § 523(a)(19) must be measured against the limitations periods set forth in the state and federal securities statutes. In order for those limitations periods to become immaterial, Plaintiff would need to show that he took a timely affirmative act to establish his debt prepetition within the applicable statute of limitations. Plaintiff did not file the May 2014 state court action within the applicable statute of limitations for any Federal or California securities laws he cited. Thus, Plaintiff has failed to establish a right to judgment under any of these theories. *See In re Chui*, 538 B.R. 793, 810-11 (Bankr. N. D. Cal. 2015) (finding that the plaintiff's Rule 10b-5 and Cal. Corp. Code §§ 25401, 25501 and 25504 theories of recovery for a § 523(a)(19) claim were time-barred under the applicable statute of limitation, preventing the court from finding that the debtor violated anti-fraud provisions); *Pierce*, 563 B.R. at 707 (stating that under § 523(a)(19) "the establishment of the debt itself, is governed by the applicable non-bankruptcy statute of limitations—if suit is not brought within the limitations period, the debt cannot be established").

**1. Federal Securities Laws**

Plaintiff did not expressly assert in the FAC which code sections Defendants violated under Federal securities laws. However, Plaintiff asserts that Defendants violated Federal laws because the offer and sale were not exempt and Defendants did not provide a prospectus or any other oral or written disclosures to Plaintiff regarding the risks or any other aspect of Plaintiff's investment. Plaintiff seems to be asserting a claim based on a violation of § 12 of the Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq. In the Reply Brief, Plaintiff also cites to Rule 10b-5. As discussed below, Plaintiff is time-barred from bringing a § 523(a)(19) claim based on these code sections. *See Toombs v. Leone*, 777 F.2d 465, 468 (9th Cir. 1985) (granting a motion

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

to dismiss when the securities violation was time-barred by the statute of limitations).

*a. § 12 of the Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq.*

Pursuant to 15 U.S.C. § 77l—

(a) Any person who--

- (1) offers or sells a security in violation of section 77e of this title, or
- (2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

Pursuant to 15 U.S.C. § 77m—

No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77l(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77l(a)(2) of this title more than three years after

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Yegiya Kutyan**  
the sale.

**Chapter 11**

In order to establish his debt prepetition under an alleged violation of § 77l(a)(1), Plaintiff needed to bring the state court action within one year after the violation, and in no event more than three years after the security was bona fide offered to the public. Plaintiff alleges that Defendants solicited investments from him from September 2008 to March 2009. Thus, Plaintiff needed to file the state court action between September 2009 and March 2010. Plaintiff further asserts that the alleged sale of the security was a public offering because Defendants solicited investments from other customers at Defendants' hair salon. That means Plaintiff had to file the state court action by March 2012 at the latest. Plaintiff brought the state court action in May 2014, which was well beyond the statute of limitations.

In order to establish his debt prepetition under an alleged violation of § 77l(a)(2), Plaintiff needed to bring the state court action within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, and in no event more than three years after the sale. Plaintiff asserts that he did not discover the violation until October 2013 or March 2018. Under the discovery rule, the May 2014 state court action would be timely. However, the statute states "in no event more than three years after the sale." 15 U.S.C. § 77m. The last alleged sale of a security occurred in March 2009. Thus, Plaintiff needed to file the state court action by March 2012 at the latest. Plaintiff brought the state court action in May 2014, which was well beyond the statute of limitations.

*b. § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.*

Rule 10b-5 makes it unlawful "directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, ... [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." The elements of a private action under Rule 10b-5 are "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

**Chapter 11**

the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Investment Partners, LLC v. Scientific–Atlanta, Inc.*, 552 U.S. 148, 157 (2008).

The applicable statute of limitations provides that a private right of action may be brought not later than the *earlier* of: two years after the discovery of the facts constituting the violation; or five years after such violation. (emphasis added) 28 U.S.C. § 1658(b). In *Merck & Co. v. Reynolds*, the Supreme Court held that "discovery" occurs when the plaintiff actually discovers the wrong, or when a reasonably diligent plaintiff would have discovered "the facts constituting the violation," including scienter, irrespective of whether the actual plaintiff undertook a reasonably diligent investigation. 559 U.S. 633, 634 (2010).

In order to establish his debt prepetition, Plaintiff needed to bring the state court action within the *earlier* of two years after the discovery of the facts constituting the violation or five years after such violation. Plaintiff asserts that he did not discover the facts constituting the violation until October 2013 or March 2018. Under the discovery rule, the May 2014 state court action would be timely. However, the statute states the *earlier* of discovery or five years after the violation. In this case the earlier of the two options is five years after the violation. The last alleged sale of a security occurred in March 2009. Thus, Plaintiff needed to file the state court action by March 2014. Plaintiff did not bring the state court action until May 2014. Thus, Plaintiff cannot show that he filed the May 2014 state court action within the applicable federal statute of limitations.

## **2. California Securities Laws**

Plaintiff did not expressly assert in the FAC which code sections Defendants violated under California securities laws. However, Plaintiff asserts that Defendants violated California laws because the offer and sale were not exempt and Defendants did not provide a prospectus or any other oral or written disclosures to Plaintiff regarding the risks or any other aspect of Plaintiff's investment. In the Reply Brief, Plaintiff cites to California Corporations Code §§ 25110 and 25401. As discussed below, Plaintiff is time-barred from bringing a § 523(a)(19) claim based on these code sections.

### **a. California Corporations Code Sections 25110, 25503 and 25507**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

"Section 25110, 25120 and 25130 make it unlawful to offer or sell any security without qualifying the security or transaction, unless it is exempt under Corporations Code sections 25100 et seq." *Bowden v. Robinson*, 67 Cal. App. 3d 705, 711 (Ct. App. 1977). "Corporations Code section 25503 imposes liability upon a person violating section 25110 (issuer transactions) and section 25130 (non-issuer transactions) providing in pertinent part that the violator shall be liable to any person acquiring from him the security sold in violation of such section, who may sue to recover the consideration he paid for such security with interest thereon at the legal rate, less the amount of any income received therefrom, upon the tender of such security, or for damages, if he no longer owns the security, or if the consideration given for the security is not capable of being returned." (internal quotations omitted) *Id.*

Pursuant to California Corporations Code § 25507—

(a) No action shall be maintained to enforce any liability created under Section 25503 (or Section 25504 or Section 25504.1 insofar as they relate to that section) unless brought before the expiration of two years after the violation upon which it is based or the expiration of one year after the discovery by the plaintiff of the facts constituting such violation, whichever shall first expire.

"This limitation is imposed to prevent purchasers from employing the remedies for violation of the qualification provisions to shift the risk of a bad investment to the seller." *Bowden*, 67 Cal. App. 3d at 712.

In order to establish his debt prepetition under an alleged violation of § 25110, Plaintiff needed to bring the state court action within two years after the violation or the one year after the discovery of the facts constituting such violation, *whichever shall first expire*. Plaintiff asserts that he did not discover the violation until October 2013 or March 2018. Under the discovery rule, the May 2014 state court action would be timely. However, the statute states the *earlier* of discovery or two years after the violation. The last alleged sale of a security occurred in March 2009. Thus, Plaintiff needed to file the state court action by March 2011. Plaintiff brought the state court action in May 2014, which was well beyond the statute of limitations.

*b. California Corporations Code Sections 25401, 25501 and 25506*

"Section 25401 of the California Corporations Code provides that it is unlawful for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT... **Yegiya Kutyan**

**Chapter 11**

any person, in connection with the offer, sale, or purchase of a security, directly or indirectly to do any of the following:

- (a) Employ a device, scheme, or artifice to defraud;
- (b) Make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person."

*Chui*, 538 B.R. at 811-12. "Section 25501 provides that any person who violates section 25401 shall be liable to the person who purchases a security from him or sells a security to him, who may then sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if he had exercised reasonable care would not have known) of the untruth or omission." *Id.*

Pursuant to California Corporations Code § 25506(b)—

For proceedings commencing on or after January 1, 2005, no action shall be maintained to enforce any liability created under Section 25500, 25501, or 25502 (or Section 25504 or Section 25504.1 insofar as they related to those sections) unless brought before the expiration of five years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever shall first expire.

"As with the statute of limitation for Rule 10b–5, section 25506 begins to run when the plaintiff ‘discovers the facts constituting the violation or in the exercise of reasonable diligence should have discovered them.’" *Chui*, 538 B.R. at 812 (citing *Kramas v. Security Gas & Oil Inc.*, 672 F.2d 766, 770–71 (9th Cir.1982)).

In order to establish his debt prepetition under an alleged violation of § 25401, Plaintiff needed to file the state court action within five years after the act or transaction constituting the violation or two years after the discovery of the facts constituting such violation, *whichever shall first expire*. Plaintiff asserts that he did

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

not discover the violation until October 2013 or March 2018. Under the discovery rule, the May 2014 state court action would be timely. However, the statute states the *earlier* of discovery or five years after the violation. The last alleged sale of a security occurred in March 2009. Thus, Plaintiff needed to file the state court action by March 2014. Plaintiff did not bring the state court action until May 2014. Thus, Plaintiff cannot show that he filed the May 2014 state court action within the applicable statute of limitations.

Accordingly, the § 523(a)(19) cause of action is time-barred. Because Plaintiff cannot cure the deficiencies in the FAC, the Court will grant the Motion without leave to amend as to the § 523(a)(19) cause of action. [FN1]

***E. 11 U.S.C. § 727(a)(4)***

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (9th Cir. B.A.P. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1198 (9th Cir. 2010)(quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *In re Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show 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 creditors; (4) that the creditors relied on such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*In re Roberts*, 331 B.R. 876, 884 (9th Cir. B.A.P. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil v. Developers Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 174 (B.A.P. 9th Cir. 2007) (circumstances might include multiple omissions or failure to clear up omissions), *aff'd*, 578 F.3d 1167. "(T)he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F3d 974, 982 (7th Cir. 2011).

Plaintiff alleges that Defendants knowingly and fraudulently failed to indicate that they are "small business debtors" as defined in 11 U.S.C. § 101(51D). Because Defendants were required to provide similar disclosures in their seven day package, Defendants derive no benefit from knowingly and fraudulently making a false oath about being small business debtors. Thus, the FAC does not provide enough factual content to draw the reasonable inference that Defendants knowingly and fraudulently made a false oath about their alleged status as small business debtors. Plaintiff has not presented sufficient factual allegations to base a § 727(a)(4)(A) claim on this alleged misstatement.

Plaintiff additionally alleges that Defendants have made false statements in their bankruptcy documents by stating a false monthly income for Custom Wood Creations, Inc. and Millennium Hair Salon. Plaintiff asserts that Defendants' Schedule I lists monthly average income for Cabinet Wood Creations, Inc. as \$4,371.83, for Millennium Beauty Salon as \$548.72 and for providing in-home support services as \$3,587.91. These amounts total \$8,508.46. Plaintiff contends that the business income is false because Defendants' monthly operating reports ("MORs") show average monthly income of \$4,777.97.

On the one hand, Plaintiff argues that, based on the historic gross income stated in Defendants' Statement of Financial Affairs, Defendants knowingly and fraudulently *undervalued* their interests in businesses. On the other hand, Plaintiff argues that Defendants *overstated* their business income, because the MORs do not reflect the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT...

**Yegiya Kutyan**

**Chapter 11**

business income listed in Defendants' Schedule I. Given the FAC's contention that Defendants' *undervalued* their interests in businesses, it is not simultaneously plausible that Defendants would knowingly and fraudulently include *inflated* business income in their Schedule I. If Defendants are knowingly and fraudulently undervaluing their business interests, Defendants derive no benefit from putting forth allegedly exaggerated business income in their Schedule I.

The question before the Court is whether the FAC included sufficient facts, if taken as true, to support a cause of action under § 727(a)(4)(A). Under the Rule 12(b)(6) standard, the Court takes these allegations as true. Because Plaintiff has not provided sufficient factual allegations to state a plausible claim under § 727(a)(4)(A) that Defendants inflated their business income in Schedule I, the Court will grant the Motion with leave to amend as to the significance of the discrepancy, if any, between Defendants' business income, as stated in their Schedule I, and the income reported in Defendants' MORs.

### **III. CONCLUSION**

The Court will grant the Motion in part and deny the Motion in part. The Court will grant the Motion, without leave to amend, as to Plaintiff's causes of action under §§ 523(a)(4) and (a)(19).

The Court will deny the Motion as to Plaintiff's allegations regarding Defendants' allegedly false oaths concerning the value of their business interests under § 727(a)(4)(A), and will grant with leave to amend regarding Defendants' business income reflected in their Schedule I, as compared to the income disclosed in their MORs.

In light of the Court's ruling, the Objection is moot. The Court will not strike the Reply Brief.

Defendants must submit the order within seven (7) days. Plaintiff may file and serve a second amended complaint no later than 14 days after the entry of the order.

### **FOOTNOTES**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 09, 2018

Hearing Room 301

2:30 PM

CONT... Yegiya Kutyan

Chapter 11

1. Even if Plaintiff's § 523(a)(19) claim was not time-barred, Plaintiff did not plead sufficient factual allegations in the FAC to show that the transaction between Plaintiff and Defendants constitutes an investment as defined under securities law. The exhibits attached to the FAC show that Plaintiff received promissory notes, which provided for Plaintiff's receipt of principal plus interest or another fixed sum. *See also* FAC, ¶¶ 21, 23-24 and 27-28. Plaintiff did not allege that he was to receive an interest *in* profits realized from real estate transactions; rather Plaintiff alleged that he was to be paid a fixed amount *from* profits realized from real estate transactions. Thus, Plaintiff did not plead sufficient factual allegations to base a § 523(a)(19) claim on these transactions. *See People v. Black*, 8 Cal. App. 5th 889, 899-900 (Ct. App. 2017), *review denied* (May 24, 2017) (finding a promissory note not a security within the meaning of the *Silver Hills* or *Howey* test because plaintiff was the only investor in the defendant's real estate development, and the agreement provided a repayment option that was not contingent on the success of the enterprise, *i.e.*, principal plus interest).

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 09, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#12.00** Status conference re: amended complaint for non-dischargeability of debt under section 523(a) for:  
(1) fraud or defalcation while acting in a fiduciary capacity [§523(a)(4)];  
(2) violations of securities law [§523(a)(19)];  
(3) and for denial of discharge for false oaths in bankruptcy documents [11 U.S.C. § 727(a)(4)(A)]

fr. 1/24/18; 3/7/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Pro Se

Haykush Helen Kutyan

Pro Se

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:14-12922 Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

**#1.00** Post confirmation status conference re chapter 11 case

fr. 8/4/16; 11/3/16; 1/19/17; 3/16/17; 7/13/17; 11/9/17

Docket 1

**Tentative Ruling:**

Based on the *Post-Confirmation Report* [doc. 418], the Court will continue the post-confirmation status conference to **November 8, 2018 at 1:00 p.m. On or before October 25, 2018**, the reorganized debtors must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE.**

Appearances on May 10, 2018 are excused.

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

**Debtor(s):**

Robert Lee Alderman

Represented By  
George J Paukert

**Joint Debtor(s):**

Noni Elizabeth Alderman

Represented By  
George J Paukert

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#2.00 Disclosure statement hearing**

Docket 113

**Tentative Ruling:**

The debtor must address the following:

***Devonwood Property.*** Exhibit 1 to the *Individual Debtor's Chapter 11 Plan of Reorganization* (the "Plan") [doc. 112] is a stipulation with the secured creditor (the "Devonwood Stipulation") regarding plan treatment for the claim secured by the real property located at 478 Devonwood Road, Altadena, CA 91101. The Devonwood Stipulation is dated March 1, 2018. However, the Devonwood Stipulation is not signed by the secured creditor and is not filed on the docket. In addition, the Court has not entered an order approving the Devonwood Stipulation. Unless the Devonwood Stipulation is contingent upon confirmation of the Plan, **no later than seven (7) days** after this hearing, the debtor must file the properly executed Devonwood Stipulation and lodge a proposed order.

***Lewis Property.*** Exhibit 2 to the Plan is a stipulation with the secured creditor (the "Lewis Stipulation") regarding plan treatment for the claim secured by the real property located at 2081 Lewis Avenue, Altadena, CA 91001 (the "Lewis Property"). Orders approving the Lewis Stipulation were lodged on September 15 and 19, 2017. However, the lodged orders did not properly attach the Lewis Stipulation, as indicated in the lodged order. **No later than seven (7) days** after this hearing, the debtor must lodge a corrected order on the Lewis Stipulation.

***Cash Flow Projections.*** The debtor must update the cash flow projections (the "Projections") attached as Exhibit F to the Individual Debtor's Disclosure Statement in Support of Plan of Reorganization (the "DS") [doc. 113].

- The Projections are dated August 2017 through January 2018. The debtor must provide updated projections for the first six months after the effective date of the Plan.
- The Projections do not appear to include the quarterly payments to the Class 6

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Herbert Simmons**

**Chapter 11**

(b) creditors. The amended projections must include such payments.

***Los Angeles County Tax Collector.*** Class 5(b) of the Plan consists of the property taxes owing to the Los Angeles County Tax Collector ("LACTC"). Does this class also include LACTC's secured claim in the amount of \$326.02, as indicated in proof of claim 2-1?

***Amended Schedules.*** The debtor attached an amended schedule A/B, an amended schedule E/F, and an amended schedule G to the DS. (DS, Exhs. B, C, E.) The debtor has not separately filed these amended schedules with the Court. **No later than seven (7) days after this hearing**, the debtor must file these amended schedules with the Court.

***Postpetition Income Taxes.*** Neither the *Declaration of Current/Postpetition Income and Expenses* (DS, Exh. A) nor the Projections (DS, Exh. F) include the debtor's postpetition income taxes.

***Family Member Contribution.*** The DS provides that the debtor's mother will provide \$5,000 in new value contribution on the effective date of the Plan, and that she will pay \$1,000 per month into the Plan. (DS, at p. 4.) The DS must include financial information about the ability of the debtor's mother to make such contributions. In connection with confirmation of the Plan, to demonstrate the feasibility of the Plan, the debtor also must file a declaration of his mother and supporting documentation demonstrating her willingness and financial ability to make such contributions.

The Court will not approve the DS until the stipulated orders discussed above have been entered and the amended schedules have been separately filed.

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#3.00 Status conference re chapter 11 case**

fr. 9/7/17; 10/5/17; 2/8/18; 3/15/18

Docket 1

**Tentative Ruling:**

Pursuant to this Court's *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 8], the debtor was required to file his income tax returns with the Court at the same time as they were filed with the taxing authority. The debtor has not filed his 2015 and 2016 income tax returns with the Court. What is the status of the debtor's 2017 income tax returns?

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10287 Gary Stephen Gelzer**

**Chapter 11**

**#4.00** Status conference re: chapter 11 case  
fr. 4/12/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#5.00** Status conference re: chapter 11 case

fr. 4/12/18

Docket 1

**Tentative Ruling:**

The debtor's February 2018 monthly operating report ("MOR") shows an ending balance of \$967.73. The debtor's March 2018 MOR shows a beginning balance of \$0.

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **July 16, 2018.**

Deadline to mail notice of Bar Date: **May 16, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **September 17, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 4, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT...**

**Cheryl Placencia**

**Chapter 11**

**Party Information**

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10785 Vernon Ascot Properties, LLC**

**Chapter 11**

**#6.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **June 7, 2018 at 2:00 p.m.** to coincide with the hearing on the debtor's *Voluntary Motion to Dismiss Chapter 11 Case* [doc. 46].

Appearances on May 10, 2018 are excused.

**Party Information**

**Debtor(s):**

Vernon Ascot Properties, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:13-17502 Glenroy E Day, Jr.**

**Chapter 11**

**#7.00** Motion for order determining value of collateral

Docket 243

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

**A. *The Note and Deeds of Trust***

On August 12, 2008, La Jolla Bank, FSB made a loan to Glenroy E. Day, Jr. (the "Debtor") in the amount of \$3,066,625 (the "Loan"). The Loan was evidenced by a promissory note (the "Note"). (Declaration of Jeanie Caldwell, ¶ 2, Exh. 1.) The Loan is secured by (i) a deed of trust encumbering the real property located at 32001 Pacific Coast Highway, Malibu, CA 90265 (the "PCH Property"), and (ii) a deed of trust (the "Zuma Deed of Trust") encumbering the real property located at 6463 Zuma Place, #165, Malibu, California 90265 (the "Zuma Property") (together, the "Deeds of Trust"). (*Id.*, ¶ 3; Exh. 2.)

The Note and Deeds of Trust were subsequently transferred to OneWest Bank, FSB ("OneWest"), which later changed its name to OneWest Bank, N.A. On August 3, 2015, CIT Bank, the U.S. commercial bank subsidiary of CIT Group, Inc., merged into OneWest Bank, N.A., which was renamed CIT Bank, N.A. ("CIT").

**B. *The First Chapter 11 Case***

On June 6, 2011, the Debtor filed a voluntary chapter 11 petition, commencing case no. 1:11-bk-17021-VK (the "First Chapter 11 Case"). On July 26, 2011, OneWest filed a secured claim in the First Chapter 11 Case in the amount of \$3,306,702.55 regarding the Note. (Declaration of Glenroy E. Day, Jr. ("Debtor Decl."), ¶ 5; Exh. 1.)

On May 2, 2012, OneWest filed a motion for relief from the automatic stay as to the PCH Property [1:11-bk-17021-VK, doc. 84]. On June 4, 2012, the Court entered an order granting relief from the automatic stay as to the PCH Property, pursuant to an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Glenroy E Day, Jr.**

**Chapter 11**

adequate protection stipulation [1:11-bk-17021-VK, doc. 96]. Subsequently, on April 3, 2013, the PCH Property was sold at a trustee's sale. (Debtor Decl., ¶ 6; Exh. 2.) Following that sale, the Debtor allegedly believed that no deficiency remained owing to OneWest on the Note. The Debtor also states that he was unaware that the debt associated with the Note still was cross-collateralized against the Zuma Property. As a result, the Debtor states that he did not inform his present counsel that a third priority lien, held by OneWest (the "Lien"), encumbered the Zuma Property. (*Id.*)

**C. The Second Chapter 11 Case**

On December 2, 2013, the Debtor filed a voluntary chapter 11 petition, commencing the pending case (the "Second Chapter 11 Case"). The Debtor scheduled OneWest as holding a disputed claim in the amount of \$0. According to the Debtor, he did so to provide OneWest notice of the Second Chapter 11 Case and the proposed treatment of its claim. The Debtor believed that no deficiency balance remained on the Note and that the Note was paid in full. (*Id.*, ¶ 7.)

As of the filing of the Second Chapter 11 Case, the Debtor owed approximately \$823,337.51 on the Note related to the first deed of trust on the Zuma Property, held by Union Bank, N.A., and \$242,757.97 on the Note related to the second deed of trust on the Zuma Property, held by PNC Bank. (*Id.*, ¶ 8.) In his schedules, the Debtor indicated that the value of the Zuma Property was \$850,000. (*Id.*, ¶ 8; doc. 1, at p. 20.)

On July 24, 2014, the Debtor filed his *Individual Debtor's Second Amended Disclosure Statement in Support of Plan of Reorganization* (the "Disclosure Statement") [doc. 129] and his *Individual Debtor's Second Amended Chapter 11 Plan of Reorganization* (the "Plan") [doc. 128]. The Disclosure Statement indicated that OneWest's claim would be treated as a general unsecured claim and paid \$0. The total amount of unsecured claims was listed as \$555,362.28. (Doc. 129, at p. 57.) The Plan did not contain any discussion regarding the Lien or the potential avoidance of the Lien. The Plan provided that holders of general unsecured claims would receive 5.25% of their allowed claims through the Plan. OneWest did not file a proof of claim in the Debtor's case and did not appear in the Debtor's case. On December 5, 2014, the Court entered an order confirming the Plan [doc. 208].

On February 12, 2015, the Debtor filed a *Motion for Entry of Final Decree*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

---

2:00 PM

CONT...

**Glenroy E Day, Jr.**

**Chapter 11**

*Discharge, and Order Closing Debtor's Chapter 11 Case* (the "Closing Motion") [doc. 226]. In the Closing Motion, the Debtor stated that he had substantially consummated his Plan payments. On March 13, 2015, the Court entered an order for entry of a final decree and closing the Debtor's case on an interim basis [doc. 228]. The Debtor has not yet completed all Plan payments. (Debtor Decl., ¶ 14.)

**D. Sale of the Zuma Property and Reopening of the Second Chapter 11 Case**

In June 2017, the Debtor refinanced the Zuma Property. The title company asked the Debtor for information regarding the Zuma Deed of Trust, which still appeared to be on the Zuma Property. The Debtor contacted CIT and asked that the Lien be released from the Zuma Property. On June 7, 2017, CIT responded with a fax stating, "Attached is a copy of the Trustee Deed Upon Sale that is recorded. There no mention on the title that this lien is still outstanding." (Debtor Decl., ¶ 10; Exh. 3.) On October 17, 2017, CIT sent the Debtor a letter confirming that it was in the process of completing the release of the Lien as to the Zuma Property. (*Id.*, ¶ 11; Exh. 4.) According to the Debtor:

The buyers of the [Zuma] Property (the "Buyers") were engaging in a section 1031 exchange and in reliance on the representation by CIT that the lien would be released without payment, (i) Buyers ceased looking for additional properties to identify under the exchange, (ii) the Buyers, who are senior citizens, would have incurred a substantial tax penalty if the sale did not close shortly after CIT's letter was issued, (iii) I vacated the Subject Property and became obligated on a lease agreement to rent a new property in the amount of \$5,500/month, (iv) I incurred \$3,750.00 in moving expenses, and (v) I placed an \$11,000 deposit related to my new lease. In other words, the Lien Release Letter had the effect of requiring that the sale of the Subject Property close due to the financial obligations I incurred in entering into a new lease, moving out of the Subject Property, and the probable liability to the Buyers related to the 1031 exchange.

(*Id.*, ¶ 12.) The Debtor also states that he incurred approximately \$25,000 in repairs to prepare the Zuma Property for sale. (*Id.*, ¶ 15.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT... **Glenroy E Day, Jr.**

Chapter 11

When the Zuma Property was in escrow, CIT informed the Debtor that it was not going to release the Lien without payment of the net proceeds of the sale to CIT. In order to allow consummation of the sale, CIT and the Debtor entered into an agreement setting aside the amount of \$175,003.65 (the "Proceeds") to be held in escrow pending a resolution of who was entitled to the Proceeds. (*Id.*, ¶ 13.)

On January 30, 2018, the parties filed their *Joint Motion to Reopen Closed Chapter 11 Case* (the "Joint Motion") [Doc. 235]. On February 27, 2018, the Court entered an order granting the Joint Motion [Doc. 238].

On March 14, 2018, the Debtor filed a *Motion for Order Determining Value of Collateral [11 U.S.C. § 506(a)]* (the "Motion to Value") [doc. 243]. In the Motion to Value, the Debtor seeks an order valuing the Zuma Property at \$850,000, based on the Debtor's knowledge of comparable sales. The Debtor alleges that the following liens encumber the Zuma Property:

<b>Lienholders (in order of priority)</b>	<b>Original Lien Amount</b>	<b>Balance of Lien Amount as of 12/2/13</b>
Union Bank, N.A.	\$940,000	\$823,337.51
PNC Bank	\$252,250	\$242,757.97
CIT Bank, N.A.	\$3,066,250	\$744,966.70

After valuation, the Debtor proposes to treat the liens as follows:

<b>Lienholders (in order of priority)</b>	<b>Secured Portion of Claim</b>	<b>Unsecured Portion of Claim</b>
Union Bank, N.A.	\$823,337.51	\$0.00
PNC Bank	\$26,662.49	\$216,095.48
CIT Bank, N.A.	\$0.00	\$744,966.70

On March 28, 2018, CIT filed an opposition to the Motion to Value [doc. 248]. On April 26, 2018, CIT filed a second opposition [doc. 252]. On May 3, 2018, the Debtor filed his reply [doc. 253].

## II. DISCUSSION

### A. *Value of the Zuma Property*



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Glenroy E Day, Jr.**

**Chapter 11**

As an initial matter, the Debtor argues that the Zuma Property should be valued at \$850,000 as of December 2, 2013, based on his personal knowledge of comparable sales. (Motion to Value, at p. 6.) However, aside from the form declaration attached to the Motion to Value, the Debtor does not attach a supplemental declaration attesting to his knowledge of such comparable sales. Nor did the Debtor attach an authenticated appraisal of the Zuma Property. Unless and until the Debtor provides sufficient data supporting his opinion of the fair market value of the Zuma Property, the Court could not grant the Motion to Value (if otherwise appropriate).

***B. Modification of the Plan***

11 U.S.C. § 1127(e) provides:

If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time period for such payments; or
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

In the Motion to Value, the Debtor states that the purpose of the requested valuation is for treatment of CIT's claim in a plan pursuant to 11 U.S.C. § 1129. In its Opposition, CIT argues that because plan payments are complete and the Plan has been substantially consummated, the Debtor cannot modify the Plan and thus has no use for § 1129. However, the Debtor states that not all Plan payments have been completed. Therefore, the Debtor may still modify the Plan for the limited purposes identified in § 1127(e).

***C. Effect of Chapter 11 Plan Confirmation***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Glenroy E Day, Jr.**

**Chapter 11**

11 U.S.C. § 1141 provides:

Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

"[A]ll creditors are bound by the provisions of the plan, regardless of whether the creditor filed a claim." *In re W.F. Monroe Cigar Co.*, 166 B.R. 110, 112 (N.D. Ill. 1994). "Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect." *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995); *see also Heritage Hotel P'ship I v. Valley Bank of Nev. (In re Heritage Hotel P'ship I)*, 160 B.R. 374, 377 (B.A.P. 9th Cir. 1993), *aff'd*, 59 F.3d 175 (9th Cir. 1995).

Generally, four elements must be present in order to establish the defense of *res judicata*: (1) the parties were identical in the two actions; (2) the prior judgment was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and, (4) the same cause of action was involved in both cases.

*In re Heritage Hotel P'ship I*, 160 B.R. at 377. "Confirmation of a plan of reorganization constitutes a final judgment in bankruptcy proceedings." *Id.* at 377 (citing *Stoll v. Gottlieb*, 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938)). "[A] confirmed Plan comprises all matters pertaining to the debtor-creditor relationship that the debtor or any creditor might raise to advance their interests in the proceedings." *In re California Litfunding, a Nevada Corp.*, 360 B.R. 310, 322 (Bankr. C.D. Cal. 2007) (citing *In re Kelley*, 199 B.R. 698, 702 (B.A.P. 9th Cir. 1996)).

Although the Debtor may modify the Plan for the limited purposes identified in § 1127(e), as CIT correctly notes, the confirmed Plan is *res judicata* as the Motion to Value and any lien avoidance matters. The Plan, proposed by the Debtor, was a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

---

2:00 PM

CONT... **Glenroy E Day, Jr.**

Chapter 11

judgment rendered by this Court, which is a court of competent jurisdiction. Confirmation of the Plan was a final judgment in the Debtor's bankruptcy proceeding. Finally, the Motion to Value and any contemplated lien avoidance are "matters pertaining to the debtor-creditor relationship" that could have been raised prior to plan confirmation, but were not.

In their papers, the parties discuss the chapter 13 case *Chagolla v. JP Morgan Chase Bank, N.A. (In re Chagolla)*, 544 B.R. 676 (B.A.P. 9th Cir. 2016). To the extent that *Chagolla* is relevant to this chapter 11 proceeding, *Chagolla* is distinguishable from the pending case. In *Chagolla*, the confirmed chapter 13 plan provided that the debtors would pay zero percent to unsecured creditors, and that the debtors would file an adversary proceeding to avoid the junior lien of the secured creditor within 90 days of the commencement of the case. The debtors did not timely file an adversary proceeding. The debtors subsequently obtained a discharge and the case was closed. A year after the case was closed and six years after plan confirmation, the debtors filed a motion to reopen the case and a motion to avoid the junior lien. The secured creditor did not object to the motion to avoid lien. The bankruptcy court denied the debtors' motion to avoid the junior lien because, among other reasons, it was untimely.

The Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") reversed, holding that the motion to avoid lien was not untimely:

In order to bring a motion to avoid lien under § 506(a) after a debtor has received a discharge or the case is closed, at a minimum, the following must be satisfied: first, ***the confirmed plan must call for avoiding the wholly unsecured junior lien*** and treat any claim as unsecured; second, the chapter 13 trustee must treat the claim as unsecured pursuant to the plan; and third, ***the creditor must not be sufficiently prejudiced so that it would be inequitable to allow avoidance after entry of discharge or the closing of the case.***

*Id.* at 681 (emphasis added). In *Chagolla*, the BAP found that the debtors had met the three criteria above, and held that the debtors' motion to avoid lien should have been granted.

Here, in the Disclosure Statement, the Debtor described OneWest's claim as a general

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT... **Glenroy E Day, Jr.**

**Chapter 11**

unsecured claim having a value of \$0. In doing so, the Debtor did not provide notice to OneWest that the Lien was going to be *avoided*. Moreover, the Plan did not specifically provide for the avoidance of the Lien. Because the Plan did not provide for the avoidance of the Lien, *Chagolla* is inapposite and does not permit the Debtor to avoid the Lien. [FN1] [FN2] [FN3]

As pertains to this dispute, chapter 11 cases differ from chapter 13 cases in an important respect: in a chapter 11 case, creditors (which hold claims in impaired classes) have the right to vote on whether to accept or reject the proposed plan. If a class rejects the plan, the plan may not be confirmed. Moreover, creditors can raise a variety of issues about whether the plan meets other standards for confirmation.

Here, the approved Disclosure Statement indicated that the total amount of allowed general unsecured claims was \$555,362.28. (Doc. 129, at p. 57.) In accordance with the Plan, holders of unsecured claims would receive payments in the amount of 5.25% of their allowed claims. If the Plan *had* provided for avoidance of the Lien, the Debtor had timely obtained such avoidance, and the Plan was confirmed as-is, then OneWest's resulting deficiency claim would have been treated as a general unsecured claim to be paid, along with the other general unsecured creditors, at 5.25%. Moreover, OneWest may have voted to reject the Plan, as well as asserted other objections to confirmation. Because OneWest did not have notice in the Plan that the Lien was to be avoided, and OneWest has been deprived of payments on any deficiency claim that would arise from the avoidance of the Lien, *res judicata* bars the Debtor from avoiding the Lien at this time.

The Debtor argues that his delay in bringing the Motion to Value was the result of excusable neglect. However, the Debtor does not cite any authority providing that excusable neglect releases a debtor from the *res judicata* effect of a confirmed chapter 11 plan. In addition, the Debtor does not address any of the factors required to show excusable neglect, as set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). Furthermore, it is not clear that the doctrine of excusable neglect applies where there is no court deadline at issue. See *Holly's Inc. v. City of Kentwood (Matter of Holly's, Inc.)*, 172 B.R. 545, 564 n. 24 (Bankr. W.D. Mich. 1994), *aff'd sub nom. In re Holly's, Inc.*, 178 B.R. 711 (W.D. Mich. 1995).

The Debtor also argues that OneWest should have filed a proof of claim to participate in the Plan. However, liens "on real property pass[] through bankruptcy unaffected."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

---

2:00 PM

CONT...

**Glenroy E Day, Jr.**

**Chapter 11**

*Dewsnup v. Timm*, 502 U.S. 410, 418 (1992). In order to retain its rights against the Zuma Property, OneWest did not need to file a proof of claim. Before plan confirmation, the Debtor did not seek to value the Zuma Property or to avoid the Lien. Accordingly, the Lien still encumbers the Zuma Property.

***D. The Debtor's Reliance on CIT's Representations***

Pursuant to 11 U.S.C. § 105(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 or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

In his reply, the Debtor first raises the argument that the Court should use its equitable powers under 11 U.S.C. § 105(a) to estop CIT from recovering the Proceeds. Aside from the belated nature of this request, the Debtor has not cited any authority that would allow a court to disregard the *res judicata* effect of a confirmed chapter 11 plan.

The Debtor argues that he relied to his detriment on CIT's communications regarding the release of its lien against the Zuma Property. The Debtor contends that he had arranged to sell the Zuma Property, and CIT reversed its position regarding the Lien while the Zuma Property was in escrow. The Debtor's contentions, regarding estoppel and any related impact on CIT's ability to enforce its lien, are not appropriate for disposition in connection with the pending Motion to Value or any contested matter. Fed. R. Bankr. P. 7001(2). To resolve these issues, the Debtor may file an adversary proceeding. If the Debtor does so, the Court will have to assess whether it has postconfirmation subject matter jurisdiction over the dispute. *See Battle Ground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124 (9th Cir. 2010) (holding that bankruptcy court in chapter 11 case did not have subject matter jurisdiction over dispute regarding postconfirmation sale of estate property).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT... Glenroy E Day, Jr.

Chapter 11

**III. CONCLUSION**

In light of the foregoing, the Court will deny the Motion to Value.

CIT must submit the order within seven (7) days.

**FOOTNOTES**

1. In support of the Motion to Value, the Debtor cites *In re Irina Torgan*, Case No. 1:12-bk-19119, in which this Court granted a chapter 13 debtor's lien avoidance motion almost four years after plan confirmation, over the secured creditor's objection. To the extent that *Torgan* is relevant to this chapter 11 case, *Torgan* is inapposite. In *Torgan*, the Court overruled the secured creditor's objection, which was based on laches. The secured creditor did not raise an objection based on *res judicata*.
2. The parties also discuss the chapter 13 case of *In re Parminder Singh*, Case No. 1:17-12988-VK. In *Singh*, the confirmed chapter 13 plan did not provide for the avoidance of the secured creditor's lien; rather, the confirmed chapter 13 plan provided that the debtor would make regular payments directly to the secured creditor, for the duration of the plan. Accordingly, avoiding the secured creditor's lien—and therefore relieving the debtor from having to make regular payments to the secured creditor—would have violated the terms of the confirmed plan. For that reason, among others, the Court did not grant the debtor's motion to avoid the lien.
3. The Debtor also relies on *Burkhart v. Grigsby*, 886 F.3d 434 (4th Cir. 2018), which holds that a wholly unsecured junior lien may be stripped regardless of whether a proof of claim has been filed. *Id.* at 440. However, *Burkhart* does not address the issue of whether a chapter 11 debtor may strip a junior lien, postconfirmation, where the confirmed chapter 11 plan did not expressly provide for the avoidance of such lien.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Glenroy E Day, Jr.**

**Chapter 11**

**Debtor(s):**

Glenroy E Day Jr.

Represented By  
Thomas B Ure  
David Samuel Shevitz

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:13-17502 Glenroy E Day, Jr.**

**Chapter 11**

**#8.00** Status conference in re-opened chapter 11 case  
pursuant to 11 U.S.C. sec 105(D)

fr. 4/12/18

Docket 0

**Tentative Ruling:**

See calendar no. 8.

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

**Debtor(s):**

Glenroy E Day Jr.

Represented By  
Thomas B Ure



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#9.00** Debtor's emergency motion to authorize use of cash collateral  
fr. 3/1/18

Docket 20

**Tentative Ruling:**

The Court will deny the debtor's continued use of cash collateral. The Court also will not authorize to use of the retainer funds to pay Ms. Fogel's fees and costs.

**I. BACKGROUND**

The real property at issue is located at 1525 Mall Road, Unit #1, Monroe, Michigan, 48612 (the "Property"). The mortgage at issue involves the JBC Staples, LLC (the "Debtor") and DG Staples, LLC as borrowers and Principal Life Insurance Company as lender (the "Mortgage"). On November 20, 2006, the Mortgage was recorded. (Mortgage, at p. 1.) The Mortgage contains the following provision regarding assignment of rents:

As additional security for the due and punctual performance and observance of the Indebtedness and obligations secured hereby, Borrower assigns to Lender, pursuant to MCLA 554.211, *et seq.*, and MCLA 554.231, *et seq.*, as amended, all the rents, profits and income under all leases or occupancy agreements or arrangements (including any extensions, amendments or renewals thereof), however evidenced or denominated, upon or affecting the Premises, whether such rents, profits and income are due or are to become due, including all such leases and occupancy agreements and arrangements in existence or coming into existence during the term of this Mortgage and any redemption period after foreclosure. This assignment shall be good and valid as against Borrower and those claiming by, under or through Borrower, from the date of this Mortgage and any redemption period after foreclosure. This assignment shall continue to be operative during the foreclosure or any other proceedings taken, to enforce this Mortgage. In the event of a foreclosure sale which results in a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT...

**JBC Staples, LLC**

**Chapter 11**

deficiency, this assignment shall stand as security during the redemption period for the payment of such deficiency. This assignment is given as collateral security only and does not obligate Lender to perform any of the covenants or undertakings required to be performed by Borrower in any leases or occupancy agreements or arrangements.

(Mortgage, § 17.1.) The Mortgage further provides:

(a) It is the intention of Lender and Borrower that the assignment effectuated hereby with respect to the Rents and other amounts due under the Leases shall be a *direct, absolute and currently effective assignment and shall not constitute merely the granting of a lien, collateral assignment or a security interest or pledge for the purpose of securing the Indebtedness secured by this Mortgage and is effective whether or not a default occurs hereunder or under the Loan Documents*. In the event that a court of competent jurisdiction determines that, notwithstanding such expressed intent of the parties, Lender's interest in the Rents or other amounts payable under the Leases constitutes a lien on or security interest in or pledge thereof, *it is agreed and understood that the forwarding of a notice to Borrower after the occurrence of an Event of Default, advising Borrower of the revocation of Borrower's license to collect such Rents shall be sufficient action by Lender to (i) perfect such lien on or security interest in or pledge of the Rents, (ii) take possession thereof; and (iii) entitle Lender to immediate and direct payment of the Rents for application as provided in the Loan Documents, all without the necessity of any further action by Lender, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Premises*. Notwithstanding the direct and absolute assignment of the Rents, there shall be no partial reduction of any portion of the Indebtedness secured by this Mortgage except with respect to Rents actually received by Lender and applied by Lender toward payment of such Indebtedness.

(b) Without limitation of the absolute nature of the assignment of the Rents, Borrower and Lender agree that (i) this Mortgage shall

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT...

**JBC Staples, LLC**

**Chapter 11**

constitute a "security agreement" for purposes of 11 U.S.C. Section 552(b), (ii) the security interest created by this Mortgage extends to property of Borrower acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents (including, without limitation, any Extraordinary Rental Payments), and (iii) such security interest shall extend to all Rents (including, without limitation, any Extraordinary Rental Payments) acquired by the estate after the commencement of any case in bankruptcy. Without limitation of the absolute nature of the assignment of the Rents, to the extent Borrower (or Borrower's bankruptcy estate) shall be deemed to hold any interest in the Rents (including, without limitation, any Extraordinary Rental Payments) after the commencement of a voluntary or involuntary bankruptcy case, ***Borrower hereby acknowledges and agrees that such Rents (including, without limitation, any Extraordinary Rental Payments) are and shall be deemed to be "cash collateral" under Section 363 of the Bankruptcy Code. Borrower may not use the cash collateral without the consent of Lender and/or an order of any bankruptcy court pursuant to 11 U.S.C. 363(c)(2), and Borrower hereby waives any right it may have to assert that such Rents (including, without limitation, any Extraordinary Rental Payments) do not constitute cash collateral.*** No consent by Lender to the use of cash collateral by Borrower shall be deemed to constitute Lender's approval, as the case may be, of the purpose for which such cash collateral was expended.

(c) Borrower acknowledges and agrees that, ***upon recordation of this Mortgage, Lender's interest in the Rents shall be deemed to be fully perfected***, and enforced as to Borrower and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code, without the necessity of (a) commencing a foreclosure action with respect to this Mortgage, (b) furnishing notice to Borrower or tenants under the Leases, (c) making formal demand for the Rents, (d) taking possession of the Premises as a lender-in-possession, (e) obtaining the appointment of a receiver of the Rents and profits of the Premises, (f) sequestering or impounding the Rents, or (g) taking any other affirmative action.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

(Mortgage, § 17.7 (emphasis added).)

The Mortgage also contains the following choice-of-law provision: "This Mortgage shall be governed by, and construed in accordance with, the laws of the state where the Premises is located, without regard to its conflicts of law principles." (Mortgage, § 21.9.)

On August 20, 2008, an assignment of the Mortgage to Wells Fargo was recorded. (Doc. 27, Exh. 13.) On January 30, 2017, Wells Fargo sent a letter to the Debtor regarding the Debtor's default under the Mortgage, as of December 1, 2016. (Doc. 27, Exh. 14.) It does not appear that Wells Fargo recorded a notice of default and served it on the Debtor. On December 19, 2017, Wells Fargo filed a complaint against the Debtor and DG Staples, LLC for appointment of receiver in Michigan state court. (Doc. 27, Exh. 1.)

On January 12, 2018, Jack M. Cohen, principal of the "Debtor, met with Illyssa I. Fogel regarding the filing of the pending bankruptcy case. Mr. Cohen tendered to Ms. Fogel two checks from the Debtor's general account, in the total sum of \$40,000. (Declaration of Jack M. Cohen ("Cohen Decl."), ¶ 4.) However, the checks were inadvertently dated "January 12, 2019." (*Id.*, ¶ 5.) On January 18, 2018, when Ms. Fogel's bank would not accept the checks, Mr. Cohen wired \$40,000 to Ms. Fogel's bank from the Debtor's bank account. (*Id.*)

On February 21, 2018, Ms. Fogel received an email from Janice Ely, transmitting a list of the documents recorded against the Property. (Doc. 59, Exh. D.) The attached list purports to show that no notice of default was recorded against the Property. At the prior hearing, the Debtor admitted that the rents from the Property (the "Rents") were its only source of income.

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 363(c)(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;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**JBC Staples, LLC  
or**

**Chapter 11**

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

Pursuant to 11 U.S.C. § 363(e):

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

Pursuant to 11 U.S.C. § 552(b)(2):

Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or 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, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

The debtor-in-possession or trustee "has the burden of proof on the issue of adequate protection." 11 U.S.C. § 363(p)(1). The "entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest." 11 U.S.C. § 363(p)(2). Pursuant to § 363(p)(2),

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

Wells Fargo has the burden of proof as to its interest in cash collateral.

As noted above, the Mortgage provides for an assignment of rents. (Mortgage, § 17.7.) On November 20, 2006, the Mortgage was recorded. On August 20, 2008, an assignment of the Mortgage to Wells Fargo was recorded. (Doc. 27, Exh. 13.)

Both parties agree that the Mortgage is governed by Michigan law. *See In re Hathaway Ranch P'ship*, 127 B.R. 859, 865 (Bankr. C.D. Cal. 1990). Under Michigan law,

[I]n connection with any mortgage on commercial or industrial property . . . to secure notes, bonds or other fixed obligations, it shall be lawful to assign the rents, or any portion thereof, under any oral or written leases upon the mortgaged property to the mortgagee, as security in addition to the property described in such mortgage. ***Such assignment of rents shall be binding upon such assignor only in the event of default in the terms and conditions of said mortgage***, and shall operate against and be binding upon the occupiers of the premises from the date of filing by the mortgagee in the office of the register of deeds for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of such notice upon the occupiers of the mortgaged premises.

Mich. Comp. Laws Ann. § 554.231 (emphasis added).

The Debtor argues that pursuant to § 17.1 of the Mortgage, the assignment of rents provision allows for the creation of a security interest upon default. According to the Debtor, such provision does not provide for an absolute assignment of rents, and the rents remain property of the bankruptcy estate. However, Wells Fargo contends that § 17.7(a) of the Mortgage controls. That provision states that the intention of the parties as to the assignment of rents was to create a "direct, absolute and currently effective assignment and shall not constitute merely the granting of a lien, collateral assignment or a security interest . . . and is effective whether or not a default occurs . . . ."

In *In re Town Ctr. Flats, LLC*, 855 F.3d 721, 723 (6th Cir. 2017), *cert. denied sub nom. Town Ctr. Flats, LLC v. ECP Commercial II LLC*, 138 S. Ct. 328 (2017), a single-asset real estate debtor obtained a loan that was secured by a mortgage and an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT... JBC Staples, LLC

Chapter 11

assignment of rents to the creditor in the event of default.

In the agreement to assign rents, Town Center "irrevocably, absolutely and unconditionally [agreed to] transfer, sell, assign, pledge and convey to Assignee, its successors and assigns, all of the right, title and interest of [Town Center] in ... income of every nature of and from the Project, including, without limitation, minimum rents [and] additional rents...."

*Id.* at 723. The debtor defaulted on the mortgage. The secured lender sent the debtor a notice of default pursuant to the terms of the mortgage and assignment of rents. The secured lender recorded the notice of default and filed a complaint against the debtor and a motion for appointment of a receiver. Before the state court could hear that motion, the debtor filed a chapter 11 petition. The secured lender filed a motion to prohibit the debtor's use of cash collateral, which the bankruptcy court denied, finding that the rents at issue were property of the bankruptcy estate. The district court reversed, holding that Michigan law established a transfer of ownership in the assigned rents.

The Sixth Circuit Court of Appeals affirmed the district court, holding that assignments of rents under Michigan Compiled Laws § 554.231 provide for a transfer of ownership in the rents "once the agreement has been completed and recorded and a default has occurred[,]" or, in other words, "once the statutory steps for perfection have been completed." *Id.* at 725. Because the mortgage at issue used broad language to transfer rights in the rents, the Court of Appeals found that the debtor had assigned the rents to the maximum extent permitted by Michigan law. *Id.* In light of this absolute assignment of rents, the Court of Appeals found that the assigned rents were not properly included in the bankruptcy estate, because the debtor did not retain ownership of the rents after default.

Here, the Mortgage contains similarly broad language regarding the assignment of rents:

It is the intention of Lender and Borrower that the assignment effectuated hereby with respect to the Rents and other amounts due under the Leases shall be ***a direct, absolute and currently effective assignment and shall not constitute merely the granting of a lien,***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, May 10, 2018

Hearing Room 301

2:00 PM

CONT...

**JBC Staples, LLC**

**Chapter 11**

*collateral assignment or a security interest or pledge for the purpose of securing the Indebtedness secured by this Mortgage* and is effective whether or not a default occurs hereunder or under the Loan Documents.

(Mortgage, § 17.7(a).) Pursuant to the terms of the Mortgage, such "absolute" assignment is effective regardless of default. This language in the Mortgage appears to provide for a transfer of ownership in the Rents to Wells Fargo under Michigan law, such that the Debtor no longer retains any ownership interest in the Rents, before or after any notice of default.

Even assuming the absolute assignment provision in the Mortgage were not effective prior to default, both the Mortgage and Michigan law provide that such provision is binding upon default. The Mortgage states that "that the forwarding of a notice to Borrower after the occurrence of an Event of Default, advising Borrower of the revocation of Borrower's license to collect such Rents shall be sufficient action by Lender to (i) perfect such lien on or security interest in or pledge of the Rents[.]" (Mortgage, § 17.1(a).) As noted above, Michigan Compiled Laws § 554.231 provides that an assignment of rents is binding on the assignor in the event of default.

On December 1, 2016, the Debtor defaulted on the Mortgage. On January 30, 2017, Wells Fargo served the Debtor with a letter regarding Wells Fargo's rights to enforce the assignment of rents following the Debtor's default. (Doc. 27, at Exh. 14.) On December 19, 2017, Wells Fargo also filed an action in Michigan state court for the appointment of a receiver. Accordingly, under the terms of the Mortgage and Michigan law, Wells Fargo appears to have completed all the necessary steps for perfection of the assignment of rents. The Debtor admits that there was a prepetition default under the Mortgage. The Debtor argues that the assignment of rents was not perfected because Wells Fargo did not record the notice of default and serve the notice of default on the tenants of the Property. However, as Wells Fargo correctly notes, these steps are required if the assignment of rents is to be binding *against the occupiers of the Property*, not against the assignor. See *Otis Elevator Co. v. Mid-Am. Realty Investors*, 522 N.W.2d 732, 733 (Mich. Ct. App. 1994). Under the holding of *Town Center*, therefore, it appears that ownership in the rents was transferred to Wells Fargo prepetition, and thus the rents are not part of the Debtor's bankruptcy estate.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**CONT... JBC Staples, LLC  
III. CONCLUSION**

**Chapter 11**

Because the Rents do not appear to be property of the estate, the Court will deny the Debtor's continued use of cash collateral. The Court also will not authorize Ms. Fogel to use the retainer funds to pay her fees and costs. If Wells Fargo seeks to recover the retainer funds, Wells Fargo must file an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(1).

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#10.00** Application to employ Illyssa I. Fogel of Illyssa I. Fogel & Associates as Attorney for Debtor

fr. 3/29/18

Docket 11

**Tentative Ruling:**

See calendar no. 10.

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

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10287 Gary Stephen Gelzer**

**Chapter 11**

**#11.00 Amended Motion to dismiss chapter 11 case**

Docket 49

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 10, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10287 Gary Stephen Gelzer**

**Chapter 11**

**#12.00** Status conference re: chapter 11 case

fr. 4/12/18

Docket 1

**Tentative Ruling:**

The Court will continue this matter to **June 14, 2018 at 2:00 p.m.** If an order dismissing this case has been entered before then [*see* calendar no. 11], the continued hearing will be vacated.

Appearances on May 10, 2018 are excused.

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

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, May 11, 2018

Hearing Room 301

3:00 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#1.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims  
[FOR RULING]

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17

Docket 1

**Tentative Ruling:**

Trial having been completed on April 24, 2018, the Court intends to post its trial ruling on June 13, 2018, before 2:30 p.m.

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By  
Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, May 11, 2018

Hearing Room 301

---

3:00 PM

CONT... Darin Davis

Chapter 7

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10387 Manuel San Juan Tobias**

**Chapter 7**

**#1.00 Reaffirmation Agreement Between Debtor and  
Nissan Motor Acceptance Corporation**

Docket 24

**Party Information**

**Debtor(s):**

Manuel San Juan Tobias

Represented By  
Elaine O San Juan

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 303**

8:30 AM

**1:18-10388 Marco T. Franco**

**Chapter 7**

**#2.00** Reaffirmation Agreement with  
Sierra Credit Corp.

Docket 9

**Party Information**

**Debtor(s):**

Marco T. Franco

Represented By  
R Grace Rodriguez

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10487 Craig Nikolai Lounsbury**

**Chapter 7**

**#3.00 Reaffirmation Agreement Between Debtor and  
Compass Bank**

Docket 8

**Party Information**

**Debtor(s):**

Craig Nikolai Lounsbury

Represented By  
Michael E Clark

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10624 Carlos Trujillo and LeAnne Getty**

**Chapter 7**

**#4.00 Reaffirmation Agreement Between Debtor and  
Kia Motors Finance**

Docket 9

**Party Information**

**Debtor(s):**

Carlos Trujillo

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

LeAnne Getty

Represented By  
R Grace Rodriguez

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#5.00** Order to show cause (1) requiring William Hill, aka Bill Hill, to personally appear and explain his connection to this case; (2) Why William Hill, aka Bill Hill, should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110; (3) Requiring Burce Rorty to personally appear and explain by whome he was hired to appear in this case and what fees, if any, he received; and (4) Requiring Carmit Benbaruh to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

Docket 1

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#6.00** Motion for reconsideration to vacate order disgorging compensation  
fr. 4/5/18

Docket 66

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#7.00** Order that William Hill, aka Bill Hill, personally appear and show cause, if any, as to why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110

Docket 45

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#8.00** Status conference re: Leslie Richards' motion for reconsideration  
to vacate order for sanctions/disgorgement

fr.4/5/18;

Docket 30

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 15, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13183 Mary F Kimbell**

**Chapter 13**

- #9.00** Order to show cause  
(1) Requiring William Hill, aka Bill Hill, to personally appear and explain his connection to the case  
(2) Requiring William Hill, aka Bill Hill to explain why he should not be fined and offered to disgorge fees for violating 11 U.S.C. § 1101  
(3) Requiring Mary F. Kimbell to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

Docket 23

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

**Debtor(s):**

Mary F Kimbell

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:16-11630 Salena G Ellerkamp

Chapter 13

#0.10 Motion for relief from stay [RP]

US BANK TRUST N.A.  
VS  
DEBTOR

fr. 5/9/18;

Docket 68

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Salena G Ellerkamp

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Salena G Ellerkamp**

**Chapter 13**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:14-10077 Oksana Grigorieva

Chapter 13

#1.00 Motion for relief from stay [AN]

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT  
VS  
DEBTOR

fr. 1/10/17; 1/24/18; 4/11/18(stip)

Docket 68

**Tentative Ruling:**

Deny, for the reasons set forth below. Notwithstanding the denial of the motion, as explained below, the automatic stay, and the terms of the debtor's confirmed chapter 13 plan, do not preclude movant's initiation and prosecution of litigation in a nonbankruptcy forum, in order for movant to pursue entry of a judgment against the debtor, based on the parties' postpetition contract.

**I. BACKGROUND**

On January 6, 2014, Oksana Grigorieva (the "Debtor") filed a chapter 13 petition. The Debtor's primary source of income disclosed on her amended schedules [doc. 46] is monthly child support award payments in the amount of \$20,834.00. Of this amount, \$834 per month in child support payments for the Debtor's second child expired in August 2015. (Doc. 46, at p. 10.)

On October 10, 2014, the Court confirmed the Debtor's chapter 13 plan [doc. 50]. The plan term is 60 months, or until approximately February 2019. Starting in February 2014, the Debtor was to make plan payments in the amount of \$482 per month. Starting on November 5, 2014, the Debtor's plan payments increase to \$1,235 per month. The Debtor's plan provides for the payment of 14% of allowed claims for general unsecured creditors. (Doc. 47, at p. 5.) The plan also provides that: "[t]he Debtor shall incur no debt greater than \$500.00 **without prior court approval** unless the debt is incurred in the ordinary course of business pursuant to 11 U.S.C. §1304(b) or for medical emergencies." (Doc. 47, at p. 5 (emphasis added).)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Oksana Grigorieva**

**Chapter 13**

Postconfirmation, on April 8, 2015, the Debtor retained White, Zuckerman, Warsawsky, Luna & Hunt ("Movant"), a forensic accounting firm, to obtain an increase in her monthly child support award. (Declaration of Lucie Mahserejian, doc. 68, ¶ 6.) Movant alleges that because of its services, the Debtor successfully obtained a considerable increase in her child support award; the Debtor disputes that she received such an increase.

In any event, in connection with Movant's postpetition services, the Debtor incurred a substantial bill in the amount of \$230,887.24. A significant portion of that bill has been paid by the Debtor's child's father. However, there remains an unpaid postpetition balance of \$108,887.24. (*Id.*, ¶ 10k.)

When the Debtor retained Movant, Movant was aware that the Debtor was in a chapter 13 case, that the Debtor had confirmed her plan, and that the Debtor was making plan payments to creditors. (Declaration of Jackie Adams-Ings, ¶ 2.) On the other hand, Movant was unaware that the Debtor's plan contained a provision requiring the Debtor to obtain Court approval of any debt greater than \$500. (*Id.*, ¶ 6.)

At the time, Movant and the Debtor both believed that the Debtor would not owe Movant any fees for Movant's services, and that the family court would order the Debtor's child's father to pay such fees. (*Id.*, ¶ 9.) However, the state court apportioned Movant's fees between the child's father and the Debtor, leaving Debtor owing a significant portion of Movant's postpetition accounting fees. (*Id.*, ¶ 10.)

On December 14, 2017, Movant filed a motion for relief from the automatic stay in the Debtor's case (the "Motion") [doc. 68]. On January 10, 2018, the Debtor filed a timely opposition [doc. 74]. On January 17, 2018, Movant filed a timely reply [doc. 77].

On January 24, 2018, the Court held an initial hearing on the Motion. On January 30, 2018, the Court entered an order continuing the hearing on the Motion and requiring Movant and the Debtor to file supplemental briefs and evidence regarding:

- (1) in light of the provisions of the Debtor's confirmed chapter 13 plan and/or any other relevant provisions of the Bankruptcy Code, the impact on Movant's request for relief in the Motion of this Court's approval not having been sought nor obtained before the Debtor incurred post-petition

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

CONT...

**Oksana Grigorieva**  
debt to Movant;

**Chapter 13**

- (2) Movant's knowledge, if any, before the Debtor incurred that debt to Movant, that Debtor was a debtor in a pending bankruptcy case; and
- (3) if the Court grants the Motion, whether Movant intends to levy against the Debtor's child support payments or otherwise collect from the Debtor on any judgment against Debtor that Movant may obtain before the Debtor completes her chapter 13 plan, and if so, how Movant intends to collect on any Judgment before the Debtor does so.

(Doc. 84, at p. 2.)

On April 18, 2018, Movant filed a supplemental brief in support of the Motion ("Movant's Brief") [doc. 92]. On the same day, the Debtor filed a supplemental brief in opposition to the Motion ("Debtor's Brief") [doc. 93]. On May 2, 2018, Movant filed a reply to Debtor's Brief [doc. 96]. On the same day, the Debtor filed a reply to Movant's Brief [doc. 97].

## **II. JUDICIAL STANDARD**

11 U.S.C. § 362(a) provides, in relevant part:

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—

- (1) the commencement or continuation, including the issuance or employment 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;

...

- (3) any act to obtain possession of property of the estate or of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

CONT...

**Oksana Grigorieva**

**Chapter 13**

property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate . . .

(Emphasis added.)

Under 11 U.S.C. § 362(d)(1), a court may grant relief from the automatic stay "for cause."

### **III. DISCUSSION**

#### ***A. The Automatic Stay and Movant's Postpetition Claim***

The automatic stay bars the commencement or continuation of any proceeding against a debtor based on a claim that arose prepetition. 11 U.S.C. § 362(a)(1). Here, Movant's claim arose postpetition. Accordingly, the automatic stay does not prevent Movant from proceeding to obtain a judgment against the Debtor in a nonbankruptcy court.

Notwithstanding the foregoing, the automatic stay in the Debtor's case bars "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). The automatic stay also bars "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). Consequently, because of the automatic stay, although Movant may proceed in state court against the Debtor to obtain a judgment, without relief from the stay, Movant may **not** enforce any judgment against property of the Debtor's estate.

In Movant's Brief, Movant states, "[Movant] will not attempt to execute against any property that Debtor has disclosed in her bankruptcy schedules[,]" and "[Movant] will not do anything to interfere with, or to disrupt, Debtor's bankruptcy case by garnishing or levying the child support payments or other property that Debtor relies on to make her plan payments." (Movant's Brief, at p. 7.)

#### ***B. Court Approval of the Debt Incurred by the Debtor***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

---

9:30 AM

CONT... Oksana Grigorieva

Chapter 13

Movant argues it is not bound by the terms of the Debtor's plan because: (1) Movant was not a creditor when the Debtor filed the petition; (2) Movant was not a creditor at the time the Court confirmed the plan; and (3) Movant had no opportunity to object to the Debtor's plan.

Pursuant to 11 U.S.C. § 1327(a)—

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.

Pursuant to 11 U.S.C. § 101(10)—

The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

Movant does not appear to be a "creditor" pursuant to § 101(10). *In re Roseboro*, 77 B.R. 38, 40 (Bankr. W.D. N.C. 1987) (holding that postpetition claimants under § 1305(a)(2) are not "creditors"). Movant's claim did not arise until postpetition and postconfirmation. Movant's claim is not of a kind specified in §§ 348(d), 502(f), 502(h) or 502(i). Finally, Movant does not have a community claim.

Although Movant's claim arose postpetition, the Debtor cites 11 U.S.C. § 1305(c), and authorities construing that section, as requiring Movant to obtain approval for a postpetition transaction.

Pursuant to 11 U.S.C. § 1305:

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

CONT...

**Oksana Grigorieva**

**Chapter 13**

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

In *In re Clayburn*, 112 B.R. 434 (N.D. Ala. 1990), a chapter 13 debtor obtained automobile insurance postpetition. The insurance company then filed a postpetition claim for the monthly premium, which the debtor agreed would be paid by the chapter 13 trustee. The chapter 13 trustee objected to the insurance company's claim pursuant to § 1305(c). The bankruptcy court sustained the objection, holding that it was practicable for the insurance company and the debtor to obtain prior approval from the trustee before incurring such debt, but the parties did not do so.

*Clayburn* is distinguishable from the Debtor's case. Movant does not intend to file a proof of claim in the Debtor's case or to seek recovery from estate assets. Because Movant does not intend to file a proof of claim, the provisions of § 1305(c) do not apply to the debt owed to Movant. The Debtor's additional authorities—in which postpetition claims were disallowed pursuant to § 1305(c) because approval of the chapter 13 trustee was not obtained beforehand—are similarly inapposite. (Doc. 93, at pp. 5–6.)

Movant asserts that under § 1305(a), filing a proof of claim is voluntary. Movant is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

CONT... Oksana Grigorieva

Chapter 13

correct. A debtor "may not force a post-petition creditor to participate in the Chapter 13 case." *In re Perkins*, 304 B.R. 477, 483 (Bankr. N.D. Ala. 2004).

Moreover, if Movant does not file a proof of claim, Movant's debt is not dischargeable through the Debtor's chapter 13 plan. *In re Goodman*, 136 B.R. 167, 170 (Bankr. W.D. Tenn. 1992) ("[o]nly postpetition debts which are allowed after the consensual filing by the creditor of a proof of claim are subject to possible discharge in the chapter 13"); *Roseboro*, 77 B.R. at 40 ("A post-petition claim under Section 1305(a)(2) for which the holder of the claim does not file a proof of claim is not discharged in a Chapter 13 case."). However, as stated in *In re Benson*, 116 B.R. 606, 609 (Bankr. S.D. Ohio 1990), if a "potential creditor does not elect to participate in the plan, he may face up to a five year delay in enforcing any claim against the debtor's assets because the debtor's future earnings and property acquired postpetition by the debtor are part of his chapter 13 estate."

As noted above, Movant does not appear to be a creditor of the estate pursuant to § 101(10), and Movant does not intend to file a proof of claim in the Debtor's case. As such, it does not appear that the debt to Movant will be affected if the Debtor obtains a chapter 13 discharge.

Nevertheless, the automatic stay applies to "all entities." 11 U.S.C. § 362(a). Sections 362(a)(3) and (a)(4) prohibit any actions to enforce claims against property of the Debtor's estate. Thus, as noted above, as concerns the collection of any judgment rendered in its favor, Movant is subject to the automatic stay.

***C. Movant's Knowledge of Debtor's Pending Bankruptcy Case***

When the Debtor engaged Movant to provide forensic accounting services, in the hopes of increasing her monthly child support payments, Debtor should have sought Court approval to incur a potential debt to Movant, in accordance with the terms of her confirmed plan.

On the other hand, Movant knew that the Debtor was in bankruptcy, that her chapter 13 plan was confirmed and that the Debtor was making plan payments. Consequently, the equities do not weigh in favor of Movant obtaining relief from the automatic stay, in a manner which could disrupt the Debtor's completion of plan payments, and her



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

CONT... Oksana Grigorieva  
receipt of a discharge.

Chapter 13

***D. Movant's Collection of Any Judgment Obtained***

Movant states that if the Court grants the Motion, it will not do anything to interfere with or disrupt the Debtor's case by garnishing or levying the child support payments or other property that the Debtor relies on to make her plan payments. Further, Movant states it will not proceed against any property of the estate.

**IV. CONCLUSION**

As noted above, because the Debtor engaged Movant postpetition, the automatic stay does not bar Movant from proceeding in a nonbankruptcy forum against the Debtor, in order to obtain a judgment regarding any amount owed to Movant. However, the automatic stay bars enforcement of any judgment against property of the Debtor's estate.

Given Movant's awareness of the Debtor's pending chapter 13 case, when it was engaged by the Debtor, and the adverse impact Movant's attempted collection of a judgment may have on Debtor's successful completion of her plan, the Court finds that relief from stay is not warranted under § 362(d)(1). Consequently, although Movant may proceed under applicable nonbankruptcy law to obtain a final judgment in a nonbankruptcy forum (because such conduct is not precluded by the automatic stay), until the automatic stay ends in accordance with 11 U.S.C. § 362(c), the stay will preclude Movant's enforcement of any judgment against the Debtor.

Debtor must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Oksana Grigorieva

Represented By  
Daren M Schlecter  
Jeff Neiderman

**Movant(s):**

White Zuckerman Warsawsky Luna

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Oksana Grigorieva**

Richard Mark Garber

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

fr. 1/24/18; 3/7/18; 4/11/18

Docket 47

**Tentative Ruling:**

Since the date of the first hearing on the motion, held on January 24, 2018, the Court has continued this hearing several times, on the parties' request.

If the parties have not resolved their dispute regarding the amount of the debtors' postpetition arrearages, in order for the Court to make that determination, the parties should be prepared to discuss the deadline for movant to file and serve its reply, and the setting of an evidentiary hearing.

**Party Information**

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10641 Abdoumalik Abdoulladjanov**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

HLTN LOANS LLC  
VS  
DEBTOR

fr. 4/18/18

Docket 8

**Tentative Ruling:**

This case was dismissed on April 30, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Abdoumalik Abdoulladjanov**

**Chapter 13**

**Debtor(s):**

Abdoumalik Abdoulladjanov Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:18-10932 Bryan K Marshall

Chapter 7

#4.00 Motion for relief from stay [UD]

ASN CALABASAS I LLC  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Bryan K Marshall Pro Se

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10446 Daniel Anthony Gutierrez**

**Chapter 7**

**#5.00** Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Daniel Anthony Gutierrez

Represented By  
Navid Kohan

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10770 Lesly Pineda**

**Chapter 7**

**#6.00** Motion for relief from stay [PP]

HYUNDAI LEASE TITLING TRUST  
VS  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Lesly Pineda

Represented By  
Sevan Gorginian

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11019 Tyrone Davis**

**Chapter 13**

**#7.00** Motion for relief from stay [UD]

PALMER/BOSTON ST. PROPERTIES III  
VS  
DEBTOR

Docket 4

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 5/14/18**

**Tentative Ruling:**

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

**Debtor(s):**

Tyrone Davis

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#8.00 Motion for relief from stay [AN]

GABOR SZABO AND TAMAS SZABO  
VS  
DEBTOR

Docket 37

**\*\*\* VACATED \*\*\* REASON: No chambers copy of motion provided.  
Motion is not on calendar.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mark Efrem Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10826 Ervin W Stromer**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Ervin W Stromer**

**Chapter 13**

**Debtor(s):**

Ervin W Stromer

Represented By  
Ronald A Norman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:18-10826 Ervin W Stromer

Chapter 13

#10.00 Motion for relief from stay [RP]

JERRY PIKOVER  
VS  
DEBTOR

Docket 14

**Tentative Ruling:**

**Unless an appearance is made at the hearing on May 16, 2018, the hearing is continued to June 13, 2018 at 9:30 a.m.**

Contrary to Judge Kaufman's self-calendaring procedure for motions that are set for hearing on shortened notice, the motion does not involve a post-petition transfer of real property to the debtor, or a pre-petition transfer to the debtor either within 90 days of the petition date, or a pre-petition transfer to the debtor involving a fractionalized interest in real property.

None of the transfer deeds attached to the motion appear to fall into the above categories. On April 1, 2018, the debtor filed his chapter 13 petition. Exhibit 3 is a quitclaim deed executed on May 11, 2015—more than 90 days before the petition date—purporting to transfer to the debtor an undivided interest in the property at issue. Exhibit 4 is a grant deed recorded on July 10, 2014 that does not involve a transfer of the property to the debtor. Exhibit 5 is a grant deed recorded on March 24, 2016 that does not involve a transfer of property to the debtor.

**On or before May 23, 2018**, movant must file and serve notice of: (1) the continued hearing on the motion and (2) the deadline to file any response no later than 14 days prior thereto.

Appearances on May 16, 2018 are excused.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Ervin W Stromer**

**Chapter 13**

**Debtor(s):**

Ervin W Stromer

Represented By  
Ronald A Norman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:15-12332 Veronik Oganyan

Chapter 13

#11.00 Motion for relief from stay [RP]

FEDERAL NATIONAL MORTGAGE ASSOCIATION  
VS  
DEBTOR

Docket 42

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Veronik Oganyan

Represented By  
Asbet A Issakhanian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

9:30 AM

1:18-10913 Rafael Sotelo Mendez

Chapter 13

#11.10 Motion for relief from stay [RP]

EVN INVESTMENTS LLC  
VS  
DEBTOR

Docket 17

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Rafael Sotelo Mendez

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Rafael Sotelo Mendez**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10982 Gabriel Medina**

**Chapter 13**

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

[As of 5/1/18 filing fee has not been paid for this motion]

Docket 10

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

**#13.00** Motion to reconsider adversary proceeding reschedule

Docket 16

**Tentative Ruling:**

The Court will deny defendant's request "to speed up the court proceedings."

**I. Background**

On September 12, 2017, defendant Robin DiMaggio ("Debtor") filed a voluntary chapter 7 petition. On November 29, 2017, Krasimir Dachev, Peace for You Peace for Me and Svilosa AD (collectively "Plaintiffs") filed a complaint against Debtor seeking nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. §§ 727(c), (d) and (e) [doc. 1]. On January 12, 2018, Debtor filed an answer to the complaint [doc. 5].

The Court set the first status conference for February 7, 2018 [docs. 3, 7]. On January 24, 2018, Plaintiffs filed a joint status report (the "JSR") [doc. 12]. In the JSR, Debtor stated the following: "Defendant requests a trial at the end of August or September 2018" and "Defendant is planning on moving to France in or about October 2018" [doc. 12, p. 2]. Debtor further stated: "I would appreciate a trial by July as I need to move back to France for medical reasons and free medical ins." [doc. 12, p. 4].

Plaintiffs requested a trial after January 1, 2019 on the following grounds, "[s]ome evidence is located overseas; anticipated delays obtaining documents from certain third parties, including the recently deceased accountant." [doc. 12, p. 2].

On February 7, 2018, Debtor did not appear at the status conference. On February 14, 2018, the Court entered a scheduling order (the "Scheduling Order") [doc. 14]. The dates set forth in the Scheduling Order are as follows:

1. The deadline to complete discovery is August 31, 2018.
2. The deadline to file pretrial motions is September 14, 2018.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

3. The deadline to complete and submit a pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1 is October 3, 2018.
4. A pretrial conference is scheduled for October 17, 2018 at 1:30 p.m.

On March 7, 2018, Debtor filed a request for the Court to expedite the adversary proceeding schedule, alleging that he plans to return to France in August 2018 for at least 12 months, in order to obtain medical treatment (the "Motion") [doc. 16]. Debtor did not submit a signed declaration or any other evidence in support of the Motion.

On March 14, 2018, the Court entered an order setting the hearing on the Motion and scheduling dates for briefing (the "March Order") [doc. 17]. The March Order states, in relevant part:

ORDERED that no later than May 2, 2018, any response to the Reconsideration Motion must be filed and served on Defendant; and it is further

ORDERED that no later than May 9, 2018, any reply in support of the Reconsideration Motion must be filed and served on Plaintiffs.

Plaintiffs timely filed an opposition to the Motion (the "Opposition") [doc. 20]. Debtor has not filed a reply.

## **II. Discussion**

Motions for reconsideration are governed by Federal Rule of Civil Procedure ("Rule") 60(b), which provides that "[o]n motion and just terms, the court may relieve a party its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect."

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [Plaintiffs], [2] the length of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395 (1993). The Court finds that the factors weigh against revising the Scheduling Order, as discussed below.

*A. Prejudice to Plaintiffs*

If the Court grants the Motion to expedite the dates set forth in the Scheduling Order, it will prejudice Plaintiffs. Plaintiffs are unlikely to be able to complete discovery in time for trial to be completed in August 2018.

If the Court extend the deadlines until Debtor's alleged intended date to return from France (in September 2019), that also would prejudice Plaintiffs. As Plaintiffs state in the Opposition, witnesses may forget facts, die or become incapacitated or unavailable. In addition, it may become harder to enforce a judgment and to locate assets after substantial delay.

Debtor has submitted no evidence of his medical issues or of his need to travel to France in August 2018, rather than after trial. Further, Debtor has not submitted any new evidence in support of the Motion.

The Motion states that Debtor did not receive notification of the status conference. However, Debtor properly was served with notice of the date and time of the status conference [doc. 7]. Moreover, Debtor signed the JSR, which had the February 7, 2018 status conference hearing date in the caption. Consequently, it is evident that Debtor had notice of the status conference date. Debtor has not alleged mistake, inadvertence, surprise, or excusable neglect as defined in Rule 60(b). This factor weighs against the Court reconsidering the Scheduling Order.

*B. Length of Delay and its Potential Impact*

Debtor filed the Motion within a reasonable time after the Court entered the Scheduling Order. The delay in filing is not an issue here.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

1:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

However, in January 2018, Debtor was served with notice of the status conference, and he did not appear. In addition, prior to the status conference, the Court posted a tentative ruling setting forth the dates in the Scheduling Order.

If he had appeared at the status conference, Debtor could have explained his opposition to the dates and deadlines proposed in the Court's posted tentative ruling. Debtor chose not to attend the status conference. Debtor has neither provided an explanation in the Motion, that was not in the JSR, nor has Debtor submitted **any** evidence, as to why the Court should reconsider the Scheduling Order.

*C. Reason for the Delay*

As stated above, Debtor did not cause any significant delay in filing the Motion.

On the other hand, Debtor could have personally attended the status conference and presented his position regarding the timing of this proceeding; Debtor chose not to attend. Debtor has not explained what "mistake, surprise, inadvertence or excusable neglect" prevented him from appearing at the status conference. As a result, Debtor has failed to meet his burden on this factor.

*D. Whether Movant Acted in Good Faith*

Debtor's failure to attend the status conference and his filing of the Motion, without providing any evidence in support of his allegations, suggests that he is not acting in good faith. The "bad faith" factor weighs against granting the Motion.

**III. Conclusion**

For the reasons stated above, the Court will deny the Motion.

Plaintiffs must submit the order within seven (7) days.

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

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Svilosa AD

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Krasimir Dachev

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

1:30 PM

1:17-12739 Mehri Akhlaghpour

Chapter 11

Adv#: 1:18-01034 NANCY J. ZAMORA, CHAPTER 11 TRUSTEE v. EMYMAC, INC., A

**#14.00** Status conference re: complaint to recover preferential and fraudulent transfers, and to preserve avoided and recovered transfers for benefit of debtor's estate

Docket 1

\*\*\* VACATED \*\*\* REASON: Judgment entered on 5/7/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

EMYMAC, INC., A NEVADA

Pro Se

**Plaintiff(s):**

NANCY J. ZAMORA, CHAPTER

Represented By  
Jeffrey S Kwong  
Irving M Gross

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#15.00** Status conference re complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **June 20, 2018 at 2:30 p.m.** to coincide with the hearing on the plaintiff's *Motion for Summary Judgment, of Plaintiff Mohammad Hassibi, Moving for Summary Judgment Holding a Texas State Court Final Judgment, Against Debtor Shahram Homayou, for Fraud, to Be Nondischargable, per 11 USC §523(A)(2)* [doc. 9].

Appearances on May 16, 2018 are excused.

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

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Maryam Azizi**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#16.00** Status conference re: complaint of Avigdor Kessler

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 6/1/18.

Deadline to submit joint status report: 6/6/18.

Continued status conference 6/20/18 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**  
Adv#: 1:17-01061 Rubin v. Greenberg

**Chapter 7**

**#17.00** Defendant's motion in limine to preclude plaintiff from introducing evidence of damages and evidence to determine dischargeability of debts

Docket 24

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/13/18 at 2:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Represented By  
Sevan Gorginian

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**  
Adv#: 1:17-01061 Rubin v. Greenberg

**Chapter 7**

**#18.00** Defendant's Motion for summary judgment

Docket 19

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/13/18 at 2:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, May 16, 2018

Hearing Room 301

2:30 PM

1:17-10825 Amie Suzanne Greenberg

Chapter 7

Adv#: 1:17-01061 Rubin v. Greenberg

#19.00 Plaintiff's motion for an order extending the deadline to file pretrial motions set forth in Court's October 30, 2017 scheduling order

Docket 38

\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/13/18 at 2:30 PM

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Represented By  
Sevan Gorginian

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#20.00** Pretrial conference re: complaint to determine dischargeability  
of debt pursuant to sections 523(a)(15)

fr. 8/23/17; 10/25/17; 4/4/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/13/18 at 2:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#21.00** State Bar of California's Motion to Compel the Appearance of Marilyn S. Scheer at Her Continued Deposition

Docket 366

**Tentative Ruling:**

Grant motion and allow four hours and 20 minutes for plaintiff's continued deposition, which must take place on or before **May 21, 2018..**

**I. BACKGROUND**

On October 10, 2017, Marilyn S. Scheer ("Plaintiff") and the State Bar of California ("Defendant") sat for their respective depositions at Defendant's Los Angeles office. Plaintiff was questioned for approximately 2.5 hours, during which Plaintiff refused to answer questions regarding her former business, on the grounds that such questions were irrelevant. (Declaration of Marc A. Shapp ("Shapp Decl."), ¶¶ 3-5.)

On November 22, 2017, Plaintiff filed a motion seeking, in part, to compel Defendant to produce a knowledgeable witness for continued deposition, on the grounds that Defendant's prior witness, Elizabeth Lew, was not adequately prepared, qualified, or knowledgeable [doc. 176]. On March 29, 2018, the Court entered an order requiring Defendant to produce its knowledgeable witness for deposition on May 1, 2018 [doc. 329].

On December 7, 2017, Defendant filed a motion to compel Plaintiff's continued deposition (the "First Motion to Compel") [docs. 181, 185]. On February 23, 2018, the Court entered an order granting the First Motion to Compel [doc. 282]. In its ruling, the Court found that questions pertaining to Plaintiff's law practice were relevant, and that Plaintiff's continued deposition was warranted. (Doc. 268, at p. 6.)

Both continued depositions were initially set for May 1, 2018. On April 19, 2018, Plaintiff requested the depositions be continued to May 8, 2018. The parties filed a stipulation to further continue the depositions [doc. 341], which the Court approved

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**  
[doc. 343].

**Chapter 7**

On May 8, 2018, Plaintiff deposed Defendant's witness from approximately 9:30 a.m. to 4:00 p.m. (Shapp Decl., ¶ 7.) Plaintiff's deposition began afterwards, with the understanding that the court reporter was available only until 5:30 p.m. that day. (*Id.*, ¶ 8.) At 5:30 p.m., Defendant asked Plaintiff for a continued deposition date. (*Id.*, ¶ 9.) An argument ensued over how much time was left for Plaintiff's deposition. Plaintiff argued that the 2.5 hours from October 10, 2017 counted toward the seven-hour time limit for depositions. Defendant maintained that Plaintiff's refusal to answer questions entitled Defendant to the full seven hours. Defendant proposed setting aside a whole day to complete Plaintiff's deposition regardless of how much time was left, but Plaintiff refused to set a date until the Court decided how much deposition time was left. (*Id.*)

Plaintiff argues that Defendant should be limited to 3.5 hours of additional deposition, because 2.5 hours occurred on October 10, 2017, and one hour occurred on May [8], 2018. (Declaration of Marilyn S. Scheer, doc. 379, ¶ 7.) If Plaintiff's October 10, 2017 is deemed a failed deposition, Plaintiff argues that Defendant should not be allowed to use any portion of it in these or any other proceedings. (*Id.*, ¶ 8.)

On May 10, 2018, Defendant filed a second motion to compel Plaintiff's continued deposition (the "Second Motion to Compel"). Defendant seeks an order compelling Plaintiff to complete her deposition no later than May 21, 2018. On May 31, 2018, the parties have a mediation scheduled before Chief Judge Bluebond. Defendant requests Plaintiff's continued deposition no later than May 21, 2018 so that it can submit a proper mediation brief by May 23, 2018 with sufficient factual information.

## **II. DISCUSSION**

Federal Rule of Civil Procedure ("Rule") 30(d)(2) provides:

Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

In *LaPlante v. Estano*, 226 F.R.D. 439 (D. Conn. 2005), the court found that plaintiff and his attorney "were recalcitrant and uncooperative in their refusal to answer questions that seek information which is clearly relevant, not privileged, not overly broad, and not unduly burdensome." *Id.* at 440. The court also found that "the plaintiff's unilateral curtailment of the deposition and subsequent offer of telephonic follow-up to be unjustified." *Id.*

*LaPlante* holds that a continued deposition is warranted where a witness is uncooperative in answering questions that sought information that was clearly relevant, unprivileged, not overly broad, and not unduly burdensome. However, *LaPlante* did not address how to calculate additional continued deposition time in light of a "failed" deposition.

In *Calderon v. Symeon*, Case No. 3:06CV1130 AHN, 2007 WL 735773 (D. Conn. Feb. 2, 2007), the defendants took plaintiff's deposition, which lasted 4 hours and 51 minutes. The court agreed with defendants that they did not use up their full seven hours, so defendants had 2 hours and 9 minutes remaining. However, defendants sought an additional full day (7 hours), contending that plaintiff was "largely uncooperative, interruptive and non-responsive-providing excessive narrative and filibuster rather than concise, responsive answers." *Id.* at \* 1. Defendants argued that the prior deposition was "unproductive" and a "waste of time."

The court in *Calderon* found that plaintiff was "recalcitrant and uncooperative in her refusal to answer questions that seek information that is clearly relevant, not privileged, not overly broad and not unduly burdensome." *Id.* at \*2. However, the court also found that the deposition was not a complete "waste of time" and that some productive testimony was elicited. *Id.* Based on its review of the deposition transcript, the court ordered plaintiff to sit for a continued deposition of 5 additional hours. *Id.*

Here, in the Second Motion to Compel, Defendant seeks to characterize all the testimony from Plaintiff's October 10, 2017 deposition as nonresponsive, and asks that the 2.5 hours from that date not be counted against its seven-hour limit. Plaintiff argues that the full 2.5 hours of the October 10, 2017 deposition should count against the seven-hour limit.

From a review of the transcript of Plaintiff's October 10, 2017 deposition and the First

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, May 16, 2018

Hearing Room 301

2:30 PM

CONT... **Marilyn S. Scheer**

**Chapter 7**

Motion to Compel, it appears that the majority of Plaintiff's improper refusals to answer questions occurred after one hour and 40 minutes into the deposition. In the First Motion to Compel, Defendant did not contend that the remainder of the deposition was a "waste of time." Accordingly, the Court will deem one hour and 40 minutes of the October 10, 2017 deposition as counting against the seven-hour limit. When added to the one hour of deposition from May 8, 2018, it appears that Defendant is entitled to a continued deposition of Plaintiff of four hours and 20 minutes in length.

**III. CONCLUSION**

The Court will grant the Second Motion to Compel. Plaintiff must appear for a continued deposition of no more than four hours and 20 minutes in length. The parties must be prepared to discuss a time and date for the continued deposition, which must take place on or before **May 21, 2018**.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Richard J Zanassi

Represented By  
Suzanne C Grandt

Tracey L McCormick

Represented By  
Suzanne C Grandt

Daniel A Lee

Represented By  
Suzanne C Grandt

Starr Babcock

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 16, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt

Thomas A Miller

Represented By  
Suzanne C Grandt

Lawrence Yee

Represented By  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

10:30 AM

**1:16-13405 Sandra Marie Harvey**

**Chapter 7**

**#1.00** Trustee's final report and applications for compensation

Amy Goldman - Chapter 7 Trustee

Docket 45

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee - approve fees of \$807.00 and reimbursement of expenses of \$7.20.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Sandra Marie Harvey

Represented By  
Daniel King

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:14-10097 Rodney M Mojarro**

**Chapter 11**

**#2.00** Post confirmation status conference re chapter 11 case

fr. 9/3/15; 2/4/16; 8/4/16; 9/8/16; 3/9/17; 4/6/17; 8/3/17;

8/10/17;11/16/17; 12/14/17;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Rodney M Mojarro

Represented By  
Michael J Jaurigue



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13118 Gloria Angelica Garcia**

**Chapter 11**

**#3.00** Post confirmation status conference re chapter 11 case

fr. 12/22/16; 4/20/17; 5/25/17; 7/6/17; 9/14/17; 11/2/17; 12/7/17; 1/18/18

**Motion for final decree filed 3/22/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order for final decree entered 4/12/18.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gloria Angelica Garcia

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#4.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/18;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17;  
2/8/18;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#8.00** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#9.00** Status conference re chapter 11 case

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 6/7/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 17, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11523 Shamel Sanani and Farideh Sanani**

**Chapter 7**

**#10.00** Motion to Avoid Lien (Real Property)  
with ASD Specialty Healthcare, Inc. dba Oncology Supply

fr. 4/12/18(stip)

Docket 99

**\*\*\* VACATED \*\*\* REASON: Rescheduled to 6/7/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 22, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18

Docket 1

**Tentative Ruling:**

The Court is continuing the first day of the trial to start on May 23, 2018, at 9:30 a.m.

The trial date of May 22, 2018 is vacated.

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 23, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**  
Adv#: 1:13-01164 Silas v. Arden

**Chapter 7**

- #1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18

Docket 1

**Tentative Ruling:**

**Tentative ruling regarding Defendant's evidentiary objections to the identified paragraphs in Plaintiff's declaration [doc. 104] set forth below:**

paras. 5 (lines 17 & 20), 7-8, 10-12, 18, 20-24, 27 (lines 6-8), 30, 31, 34, 35 (lines 7-13, 16-17), 39-43, 45, 46, 50-56, 60, 64 (p. 30, line 24 to p. 31, line 7), 65, 66, 68- 70, 72, 73 (p. 34, line 12 to p. 35, line 11), 74, 77, 78, 80-82, 90, 93- 97, 104, 115 -127, 129, 130, 135-137, 141, 144-146, 148, 150, 155, 156, 158, 168-175: overruled

para. 5 (lines 22-23): sustained re: "inapplicable as a matter of law"

para. 16 (lines 20-23): sustained re: "apparent implication"

paras. 75, 91 (lines 20-24), 105: sustained, but the Court will take judicial notice of the statutes

para. 76 (line 16): sustained re: "he knew"

para. 98 (lines 19-21): sustained re: "so that any contention that the notary acknowledgment form may have pertained to some other document could not have had merit."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 23, 2018**

**Hearing Room 301**

9:30 AM

**CONT... James Ellis Arden Chapter 7**

para. 148 (lines 18-19): sustained re: "who Gunnell testified he was aware ran the lab while Gunnell worked there."

paras. 25 (lines 15-18), 29, 32 (lines 17-20), 33 (lines 7-10), 35 (lines 3-6), 44, 47 (lines 5-17), 48, 49 (lines 14-16), 57 (lines 5-9), 58 (lines 13-16), 59 (lines 3-4), 61 (lines 21-23), 62, 64 (lines 20-22), 67, 71 (lines 25-28, 1-5 & 13-14), 73 (lines 9-11), 79, 83, 84, 85, 88, 89 (lines 23-27), 99 (p. 41, lines 25-28 and p. 42, lines 1-7), 100-103, 106 (p. 44, lines 2-8), 107 (lines 13-21), 108, 109, 110, 111 (lines 8-14), 112, 113, 114, 128 (lines 13-17), 131, 132-134, 143 (lines 3-9), 147 (lines 7-8), 151 (lines 4-7), 153 (lines 23-24), 154 (lines 3-5), 161 (lines 5-9), 162 (lines 17-19), 163, 165-167: sustained

footnote 4: overruled

footnotes 3, 5, 6, 7, 8, 12: sustained

**Tentative ruling regarding Defendant's evidentiary objections to the exhibits offered by Plaintiff [doc. 104] set forth below:**

Exhibits 1-27, 29-30, 32-51, 55, 60-62, 67-71, 73-79: overruled

Exhibits 56-59, 63-65: sustained

Withdrawn exhibits: 28, 31, 52-54, 66, 72

**Tentative ruling regarding Defendant's objections to Plaintiff's request for judicial notice of matters being submitted at trial [doc. 103] set forth below:**

documents 4 (Ex. 4), 13 (Ex. 23), 14 (Ex. 24), 18 (Ex. 34), 45 (Ex. 70), 51 (Ex. 78): overrule

document 52 (Ex. 79): the Court will admit this document if it is sufficiently authenticated

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 23, 2018**

**Hearing Room 301**

9:30 AM

**CONT... James Ellis Arden**

**Chapter 7**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 24, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18

Docket 1

**Tentative Ruling:**

In accordance with the appellate opinion of the United States Bankruptcy Appellate Panel of the Ninth Circuit, Defendant's testimony is being admitted to evaluate whether Defendant, in prosecuting the malpractice action against Plaintiff, had a subjective intent to harm Plaintiff or a subjective belief that harm to Plaintiff was substantially certain, *i.e.*, what was Defendant's subjective opinion as to the merits of the malpractice litigation, and his explanations for why he held such an opinion.

When the points raised by Plaintiff's evidentiary objections go to the *credibility* of Defendant's admitted testimony, the Court will take those arguments into account, in that context.

**Tentative ruling regarding the evidentiary objections to the identified paragraphs in Defendant's declaration [doc. 102] set forth below:**

paras. 4, 6-8, 10-15, 17-20, 22, 24, 26-31, 35-47, 49, 50, 57, 61, 62, 63, 65, 66, 68-71, 73-75, 78 (lines 2-6), 80, 83, 85: overruled

para. 21: sustained re "I formed an opinion that she seemed incredulous that I had done so"

para. 32: sustained re "The judge in the malpractice case may have felt the same, inasmuch as he did not issue any injunction"

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 24, 2018**

**Hearing Room 301**

9:30 AM

**CONT... James Ellis Arden**

**Chapter 7**

para. 33: sustained re "In bringing up her injunction motion now, Silas seems to imply that I should not have trusted what Gunnell told me about what had happened to him. Whatever Silas means to suggest . . . . "

para. 48: sustained re: "Gunnell had provided to me a document showing his employer knew that he had sought medical treatment."

paras. 9, 16 (lines 17-19), 23 (lines 5-8), 25, 34, 48 (lines 20-22), 51, 52 (lines 19-21), 53, 54, 55 (lines 21-22), 56, 58-60, 64 (lines 7-9), 67, 72 (lines 7-8), 76, 77 (p. 27, lines 26-28 and p. 28, line 1), 78 (lines 7-10), 79, 81 (lines 8-9), 82, 84: sustained

footnote 3: overruled

footnote 4: sustained

**Tentative ruling regarding the evidentiary objections to the exhibits offered by Defendant [doc. 102] set forth below:**

Exhibits A, B, C: overruled

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

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 24, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#2.00 Status conference re chapter 11 case**

fr. 12/21/17; 1/11/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Court rescheduled hearing for 6/7/18 at  
1:00 PM. [Dkt.52]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, May 25, 2018

Hearing Room 301

9:30 AM

1:13-13879 James Ellis Arden

Chapter 7

Adv#: 1:13-01164 Silas v. Arden

**#1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18

Docket 1

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Trial re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18

Docket 12

**Tentative Ruling:**

*Tentative ruling re: evidentiary objections and request for judicial notice*

**Defendant's Objections to Declaration of David Frank [doc. 208]**

para. 6: overrule

para. 8: overrule

para. 15: overrule as to "Gerson Fox expressed outright surprise that there were not enough funds in each of the operating accounts for the Default Properties."

para. 15: sustain as to "I could only conclude that he was not aware of the on-line Banking transfers."

para. 18: overrule as to "Attached hereto as Exhibit "B" and incorporated herein by this reference is a true and correct copy of the Bank Statements of Broadway Workman, LLC Operating Account from January1, 2011 until March 30, 2011."

para. 19: overrule as to "I believe that these transfers were created to arrange for the automatic payment of the mortgage on the Property to Wells Fargo."

para. 20: overrule as to "See Exhibit "B", bate-stamped FOX00255."

para. 20: overrule as to "per Exhibit B, bate-stamped FOX-00701, indicates that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Bank Account No. 000372501200 can be identified as belonging to Mika Realty Group, LLC in the following manner."

para. 21: overrule as to "Therefore, all transfers to that account were transfers to Mika Realty Group."

para. 22: overrule

para. 23: overrule

para. 24: overrule

para. 27: overrule

para. 28: overrule

para. 31: overrule

para. 33: overrule

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Trustee(s):**

David Seror (TR) Pro Se

David Seror (TR) Pro Se

**US Trustee(s):**

United States Trustee (SV) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#2.00** Mohammed Islam's Motion to quash subpoena to appear at trial

Docket 187

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On February 13, 2015, Ernest Charles Barreca ("Defendant") filed a voluntary chapter 7 petition. On May 15, 2015, Gerson and Gertrude Fox (together, "Plaintiffs") filed an adversary proceeding against Defendant, seeking nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(4) and (a)(6). Trial in this adversary proceeding is set for May 29-June 1, and June 4, 2018.

On February 5, 2018, the parties filed a joint pretrial stipulation (the "JPS") [doc. 145]. In the JPS, the parties identify Mr. Islam as a witness on the following issues of fact:

**28. Instead of accounting to Telesis of the funds and applying them to pay Telesis and the County of Los Angeles, Defendant, as Chief Executive Officer of the Mika Realty Group, LLC, diverted these funds elsewhere.**

...

[Plaintiffs'] Evidence: Testimony of Christopher Reeder and Mohammed Islam

...

[Defendant's] Evidence: . . . Testimony of Debtor. Testimony of Chris Reeder. Testimony of Richard Schloss. Testimony of Michael Kamen.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Ernest Charles Barreca**  
Testimony of Mohammed Islam.

**Chapter 7**

(JPS, at p. 24.)

**71. Debtor authorizes the transfer of funds from Victory Lofts, LLC to Modern Parking and/or Mohammed Islam.**

...

[Plaintiffs'] Evidence: Testimony of Ernest Charles Barreca, Testimony of Mohammed Islam

(JPS, at p. 52.)

**72. The Islam Transfer Funds were never returned to Victory Lofts, LLC.**

...

[Plaintiffs'] Evidence: Testimony of Ernest Charles Barreca, Testimony of Mohammed Islam

...

[Defendant's] Evidence: . . . Testimony of Debtor. Testimony of Mohammed Islam.

(JPS, at p. 52.)

The parties also state that Mr. Islam will testify that:

A. On or about March 19, 2010, Defendant personally arranged a loan between Mika and Modern Parking, Inc. for \$150,000.00. On March 24, 2010, Defendant, a CEO of the Mika Realty Group transferred \$200,000 of the Settlement Funds to Reeder Lu, LLP's operating account as payment for legal services not exclusively provided for Star News. On or about June 10, 2010, Defendant, as Chief Officer of the Mika Realty Group transferred another \$152,987.98 of the Settlement

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

Funds to Reeder Lu, LLP's operating account as payment for legal services not exclusively provided for Star News.

B. On or about December 30, 2010, after the sale of the improved commercial real estate at 7012 Euclid Avenue, Cleveland, Ohio 44103 (the "Cleveland Property") closed, Victory Lofts, LLC transferred to Modern Parking and/or Mohammed/Islam, and Modern Parking and/or Mohammed Islam received from the Victory Lofts, LLC, a total of \$410,000.00 (the "Islam Transfer Funds") belonging solely to the Victory Lofts, by way of a wire transfer directly to an account belonging solely to Modern Parking and/or Islam.

C. The Islam Transfer Funds were never returned to Victory Lofts, LLC.

(JPS, at p. 183.) The parties estimate one hour for direct examination of Mr. Islam, and one hour for cross-examination. (*Id.*)

On April 9, 2018, Plaintiffs served a subpoena upon non-party witness Mohammed Islam to appear and testify at trial (the "Subpoena"). (Declaration of Mohammed Islam ("Islam Decl."), ¶ 5; Exh. 2.) Accompanying the Subpoena was a letter from Defendant's counsel stating:

You have been subpoenaed for a trial which could last a number of days. You must be present in Court when your name is called, but we do not want you to make any unnecessary trips to the courthouse, nor do we want you to wait more than absolutely necessary to testify. We will do our best to minimize the inconvenience by having you agree to appear on notice.

(*Id.*, ¶ 6; Exh. 3.)

On April 30, 2018, Mr. Islam filed a Motion to Quash Subpoena to Appear at Trial (the "Motion") [doc. 187]. Mr. Islam is the president of Modern Parking. (Islam Decl., ¶ 1.) Modern Parking's involvement with Mika Realty and Michael Kamen stemmed from loans that Mr. Islam obtained from Mika Realty and from LLCs that were managed and operated by Mika Realty. (*Id.*, ¶ 3.) Mr. Islam alleges that he paid

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

these loans back, and that any discrepancies with the repayment were resolved during the bankruptcy cases of Star News and Victory Lofts. Mr. Islam further alleges that he received releases from the bankruptcy trustee confirming that the loans were paid in full. (*Id.*, ¶ 4.)

Mr. Islam states that Ramadan begins on May 15, 2018 and ends on June 14, 2018. (Islam Decl., ¶ 8.) Because he is a devout Muslim, Mr. Islam intends to observe the following duties during Ramadan:

- (i) not eating or drinking during daylight hours; (ii) only eating two meals a day—one before sunrise and one after sunset; (iii) either visiting mosque or remembering Allah by reciting Ramadan Dua during all daylight hours; (iv) engaging in at least five daily prayers, including the Taraweeh prayer; and (v) spending the entire night praying for Allah.

(*Id.*, ¶ 9.) Mr. Islam alleges that his adherence to his religious duties prevents him from appearing at trial to testify and will affect his ability to give competent testimony.

On May 15, 2018, Plaintiffs filed an opposition to the Motion and a request for judicial notice ("RJN") [docs. 224, 225]. The RJN attaches a Wikipedia article on Ramadan and a "Vox" website article on Ramadan.

## **II. DISCUSSION**

Federal Rule of Civil Procedure ("FRCP") 45(a)(1)(A)(iii) allows a party to serve a subpoena commanding "each person to whom it is directed to . . . attend and testify[.]" Pursuant to FRCP 45(c):

A subpoena may command a person to attend a trial . . . only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

transacts business in person, if the person

- (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

Pursuant to FRCP 45(d)(1), "[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena."

Pursuant to FRCP 45(d)(3)(A)—

On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

"The party who resists discovery has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections." *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998).

"Upon motion of the party opposing a subpoena, the court 'must quash or modify a subpoena that . . . subjects a person to undue burden. The party seeking to quash a subpoena has the 'burden of persuasion.'" *Id.* (quoting *Travelers Indem. Co. v. Metropolitan Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005)). "However, the party issuing the subpoena must demonstrate, in turn, that the information sought is relevant and material to the allegations and claims at issue in the proceedings." *Rocky Mountain Medical Management, LLC, v. LHP Hospital Group, Inc.*, 2013 WL 6446704, at \*2 (D. Idaho 2013). "In all controverted cases, it is up to the court to strike a balance among the degrees of relevance of the requested material, the severity of the burden on the subpoenaed person or entity, and the utility of the protective



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

mechanisms provided by the Federal Rules." *Id.*

"The most obvious burden is borne by the nonparty witness, and we are instructed to be particularly sensitive to any prejudice to non-litigants drawn against their will into the disputes of others." *Id.* (citations omitted). "[C]oncern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs' in a Rule 45 inquiry." *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014) (quoting *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998)). "Restrictions on discovery may be broader where a non-party is the target of discovery to protect such third parties from unnecessary harassment, inconvenience, expense or disclosure of confidential information." *In re Candor Diamond Corp.*, 26 B.R. 847, 849 (Bankr. S.D.N.Y. 1983).

**A. Judicial Notice**

As an initial matter, the Court will deny Plaintiffs' request for judicial notice. Pursuant to Federal Rule of Evidence ("FRE") 201(b):

The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

In *Steele v. McMahon*, Case No. CIVS05-1874 DADP, 2007 WL 2758026 (E.D. Cal. Sept. 21, 2007), the plaintiff requested that the court take judicial notice of a Wikipedia article on tunnel vision. The defendant objected "on the grounds that [the Wikipedia article was] irrelevant, not the appropriate subject for judicial notice, hearsay, and not authenticated." *Id.* at \*8, n.5. The court sustained the objection, stating that the Wikipedia article did not meet the requirements of FRE 201.

Here, Plaintiffs ask the Court to take judicial notice of a Wikipedia article on Ramadan, and a printout of an article on Ramadan from the "Vox" website. (RJN,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, May 29, 2018

Hearing Room 301

9:30 AM

CONT... Ernest Charles Barreca

Chapter 7

Exhs. A & B.) Neither article appears to contain facts that are not subject to reasonable dispute because the facts are generally known within this Court's jurisdiction, or because such facts can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. In particular, the accuracy of Wikipedia articles is open to question, given that any user may edit Wikipedia articles at any given time. Similarly, the "Vox" article appears to present numerous "facts" about Ramadan without citation to any relevant religious texts or to other evidence of Muslim cultural practice. Accordingly, these documents do not meet the requirements of FRE 201.

***B. Relevance of Mr. Islam's Testimony***

In opposing a motion to quash, "[t]he subpoenaing party must first show that its requests are relevant to its claims or defenses, within the meaning of Federal Rule of Civil Procedure 26(b)(1)." *In re Domestic Drywall Antitrust Litig.*, 300 F.R.D. 234, 239 (E.D. Pa. 2014).

Based on a review of the JPS, it appears that Mr. Islam's testimony is relevant to the transfers made by Defendant to Modern Parking and Mr. Islam. As a recipient of the transfers, Mr. Islam has personal knowledge of the circumstances surrounding the transfers.

***C. Undue Burden on Mr. Islam***

Next, the burden shifts to the subpoenaed nonparty who must show that [it] . . . is protected under Rule 45(d)(3)(A) or (B). . . . If the subpoenaed nonparty claims. . . [an] undue burden under Rule 45(d)(3) (A), it must show . . . a 'clearly defined and serious injury.'

*Domestic Drywall*, 300 F.R.D. at 239 (citation omitted).

Because the burden is on the party seeking to quash a subpoena, . . . that party cannot merely assert that compliance with the subpoena would be burdensome without setting forth the manner and extent of the burden and the probable negative consequences of insisting on compliance.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

*Kirschner v. Klemons*, Case No. 99 CIV. 4828 (RCC), 2005 WL 1214330, at \*2 (S.D.N.Y. May 19, 2005) (citation omitted).

In *Choice, Inc. of TX v. Graham*, Case No. CIV.A. 04-1581, 2005 WL 1431689 (E.D. La. May 31, 2005), defendant sought to quash a subpoena requiring his wife to appear for deposition, because she was ill and the deposition would be an undue burden on her. The court denied the motion to quash because defendant did not provide sufficient information about her illness to establish that she was not in a condition to testify.

Similarly, Mr. Islam does not provide sufficient information about the nature of the alleged undue burden of being required to testify during Ramadan. He alleges that being required to appear and testify at trial will interfere with his fasting and prayer duties. He further argues that he will be subject to "severe, irreparable undue burden if he is forced to appear during Ramadan." (Motion, at p. 5.) However, aside from these conclusory statements, Mr. Islam does not set forth the manner and extent of the burden, or any probable negative consequences of insisting on compliance. Plaintiffs have stated that they need only two hours of Mr. Islam's time. These two hours could be scheduled as to minimize any interference with Mr. Islam's religious duties, e.g., in light of his fasting regimen, requiring him to testify in the early morning rather than late afternoon. Accordingly, Mr. Islam has not shown that appearing and testifying at trial will cause him a "clearly defined and serious injury."

### **III. CONCLUSION**

In light of the foregoing, the Court will deny the Motion.

Plaintiffs must submit the order within seven (7) days.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#3.00** Defendant's Motion in limine #1 by to preclude plaintiffs from relitigating legal and factual issues previously litigated and dismissed against defendant

Docket 179

**Tentative Ruling:**

The Court will deny: (i) defendant's *Motion in Limine No. 1 to Preclude Plaintiffs from Relitigating Legal and Factual Issues Previously Litigated and Dismissed Against Defendant* ("Motion One") [doc. 179]; (ii) defendant's *Motion in Limine No. 2 to Exclude Expert Testimony of Jack Garrett* ("Motion Two") [doc. 210]; and (iii) defendant's *Motion in Limine No. 3 to Preclude Any Reference to, Mention of, Introduction of, Evidence of or Eliciting Testimony Regarding State Court Default Judgment* ("Motion Three") [doc. 219] (collectively, the "Motions").

**I. BACKGROUND**

On April 18, 2013, Gerson and Gertrude Fox ("Plaintiffs") filed a complaint in state court seeking damages against Defendant on several causes of action, including elder abuse, fraud, deceit, and conversion (the "State Court Action") [doc. 108, Exh. E]. On July 8, 2014, the court in the State Court Action entered a default judgment against Defendant in the amount of \$7,958,622.62 [doc. 108, Exh. F].

On February 13, 2015, Ernest Charles Barreca ("Defendant") filed a voluntary chapter 7 petition. On May 15, 2015, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(4) and (6) [doc. 1]. On July 27, 2015, Plaintiffs filed a first amended complaint, which added claims for relief under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B) (the "FAC") [doc. 12].

The FAC alleged that Mr. Fox agreed to go into business with Michael Kamen, who had a real estate business that acquired and sold commercial properties. These investments took the form of several single purpose entity limited liability companies or limited partnerships (the "SPEs"). In October 2006, Defendant became the Chief

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Executive Officer of Mika Realty Group and took responsibility for managing the SPEs. The FAC alleged that Defendant drove SPEs into default by failing to pay obligations and enabled his friends to buy the SPEs' promissory notes at a steep discount.

On August 5, 2016, Plaintiffs provided Defendant with their Federal Rule of Civil Procedure ("FRCP") 26 initial disclosures of witnesses and evidence. Plaintiffs never amended or supplemented their initial disclosures [doc. 159, Declaration of Jeff Katofsky, Esq., ¶ 2].

On April 27, 2017, the Court entered a scheduling order [doc. 79], setting the following deadlines: (A) April 26, 2017 as the discovery cutoff date; (B) May 5, 2017 as the last day to file pretrial motions; (C) May 24, 2017 as the date by which the parties must file a joint pretrial stipulation; and (D) June 7, 2017 as the pretrial conference.

On May 5, 2017, Defendant timely filed a motion for summary judgment (the "MSJ") [doc. 86]. On May 31, 2017, the parties filed an initial pretrial stipulation (the "IPS") [doc. 99]. On June 21, 2017, Plaintiffs filed an opposition to the MSJ [doc. 107]. On June 28, 2017, Defendant filed a reply to the opposition to the MSJ [doc. 117]. Defendant did not object to the use of any exhibits in the opposition to the MSJ pursuant to FRCP 26(a)(1) and 37(c). On July 12, 2017, the Court denied the MSJ [doc. 121].

On July 12, 2017, at a pretrial conference in this case, the Court adopted a pretrial briefing and witness testimony schedule. On December 20, 2017, at a pretrial conference, the Court set a pretrial schedule in this proceeding. During the hearing, the Court bifurcated this proceeding. The first phase will pertain to Plaintiffs' nondischargeability causes of action. The second phase will pertain to the issue of damages.

On January 5, 2018, the Court entered another scheduling order [doc. 143], this time setting the date by which the parties must file a joint pretrial stipulation as February 5, 2018, setting a pretrial conference for February 14, 2018 and trial for the week of May 29, 2018.

On February 5, 2018, the parties filed a joint pretrial stipulation (the "JPS") [doc.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

145]. The parties attached their respective exhibit and witness lists to the JPS. On February 8, 2018, Defendant filed a motion to exclude Plaintiffs' evidence, outlining objections to each of Plaintiffs' JPS exhibits largely on the grounds of relevance, lack of foundation, and failure to provide FRCP 26 disclosures [doc. 155]. On February 15, 2018, Defendant filed a supplemental motion to exclude witnesses in the JPS which Plaintiffs did not previously disclose pursuant to FRCP 26 (the "Supplemental Motion") [doc. 159]. On April 26, 2018, the Court entered an order denying in part and granting in part Defendant's motion to exclude Plaintiffs' evidence [doc. 184].

On April 16, 2018, Defendant filed Motion One and a request for judicial notice in support of Motion One [doc. 180]. On May 15, 2018, Plaintiffs filed an opposition to Motion One ("Opposition One") [doc. 223].

On May 8, 2018, Defendant filed Motion Two [doc. 210]. On May 14, 2018, Defendant filed the Declaration of Jeff Katofsky, Esq. in support of Motion Two [doc. 218]. On May 15, 2018, Plaintiffs filed an opposition to Motion Two ("Opposition Two") [doc. 226].

On May 15, 2018, Defendant filed Motion Three [doc. 219] and the Declaration of Jeff Katofsky, Esq. in support of Motion Three [doc. 220]. On May 22, 2018, Plaintiffs filed an opposition to Motion Three ("Opposition Three") [doc. 233].

## **II. RELEVANT LAW**

### ***1. Motions in Limine Generally***

"Although the Federal Rules of Evidence...do not explicitly authorize a motion in limine, the Supreme Court has held that trial judges are authorized to rule on motions in limine pursuant to their authority to manage trials." *Goodman v. Las Vegas Metro. Police Dep't*, 963 F. Supp. 2d 1036, 1046 (D. Nev. 2013) (citing to *Luce v. United States*, 469 U.S. 38, 41 n. 4 (1984)). "A motion in limine is a request for the court's guidance concerning an evidentiary question. Judges have broad discretion when ruling on motions in limine." *Id.*

A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area. In the case of a jury trial, a court's ruling "at the outset" gives counsel advance notice of the scope

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

of certain evidence so that admissibility is settled before attempted use of the evidence before the jury. Because the judge rules on this evidentiary motion, in the case of a bench trial, a threshold ruling is generally superfluous.

*United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009). "A motion in limine is not the proper vehicle for seeking a dispositive ruling on a claim, particularly after the deadline for filing such motions has passed." *Hana Fin., Inc. v. Hana Bank*, 735 F.3d 1158, 1162 n. 4 (9th Cir. 2013) *cert. granted*, 134 S. Ct. 2842, 189 (2014) and *aff'd*, 135 S. Ct. 907 (2015); *see also Schagene v. Mabus*, 2015 WL 251197, at \*1 (S.D. Cal. Jan. 20, 2015) ("[A] motion *in limine* should not be used to resolve factual disputes or weigh evidence.").

In light of their limited purpose, motions in limine should not be used to resolve whether certain claims should survive. Rather, parties should target their arguments to demonstrating why certain items or categories of evidence should (or should not) be introduced at trial, and direct the trial judge to specific evidence in the record that would favor or disfavor the introduction of those particular items or categories of evidence.

*Strickholm v. Evangelical Lutheran Good Samaritan Soc.*, 2013 WL 788096, at \*4 (D. Idaho Mar. 1, 2013).

To exclude evidence on a motion in limine the evidence must be inadmissible on all potential grounds. Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context. This is because although rulings on motions in limine may save time, costs, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence.

*Goodman*, at 1047 (internal citations omitted). "[I]n limine rulings are not binding on the trial judge, and the judge may always change his mind during the course of a trial." *Holler v. United States*, 529 U.S. 753, 758 n. 3 (2000).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

"Denial of a motion in limine does not necessarily mean that all evidence contemplated by the motion will be admitted to trial. Denial merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded." *Ellsworth v. Prison Health Servs. Inc.*, 2014 WL 1493018, at \*2 (D. Ariz. Apr. 16, 2014).

**2. Issue Preclusion**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245).

The concept of privity for the purposes of ... collateral estoppel refers to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is sufficiently close so as to justify application of the doctrine of collateral estoppel.

*Rodgers v. Sargent Controls & Aerospace*, 136 Cal. App. 4th 82, 90–91 (2006), *as*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**  
*modified* (Feb. 7, 2006).

**Chapter 7**

**3. Expert Testimony**

Pursuant to Federal Rule of Evidence ("FRE") 702—

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

"The party proffering the expert testimony bears the burden of establishing by a preponderance of the evidence that the testimony meets the requirements of Rule 702." *In re Countrywide Fin. Corp. Mortgage-Backed Sec. Litig.*, 984 F. Supp. 2d 1021, 1026 (C.D. Cal. 2013) (citing to *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593 n. 10, 113 S.Ct. 2786, 125 L.Ed2d 469 (1993)).

"The admissibility hurdle for qualifications is relatively low, and it requires a 'minimal foundation' of knowledge, skill, and experience." *Doyle v. Chrysler Grp., LLC*, 2015 WL 353993, at \*5 (C.D. Cal. Jan. 21, 2015); *see also Han garter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1015-16 (9th Cir. 2004) ("Rule 702 contemplates a broad conception of expert qualifications.").

"We have interpreted Rule 702 to require that expert testimony be both relevant and reliable." *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir.) *cert. denied*, 135 S. Ct. 55, 190 L. Ed. 2d 30 (2014) (internal quotation omitted).

"Relevancy simply requires that '[t]he evidence ... logically advance a material aspect of the party's case.'" *Id.* (quoting *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007)). As to reliability, the issue is "whether an expert's testimony has 'a reliable basis in the knowledge and experience of the relevant discipline.'" *Id.* (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149, 119 S. Ct. 1167, 143 L.Ed.2d 238 (1999)). "Shaky but admissible evidence is to be attacked by cross examination,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

contrary evidence, and attention to the burden of proof, not exclusion." *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010).

Pursuant to Rule 26(a)(2)—

- (A) *In General*. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.
- (B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:
- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
  - (ii) the facts or data considered by the witness in forming them;
  - (iii) any exhibits that will be used to summarize or support them;
  - (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
  - (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
  - (vi) a statement of the compensation to be paid for the study and testimony in the case.

If a party fails to provide information or identify a witness as required by FRCP 26(a), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial unless the failure was substantially justified or harmless. FRCP 37(c)(1). This "provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence." Adv. Comm. Notes on 1993 Amendments to FRCP 26(a), *see Yeti By Molly, Ltd. v. Deckers*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

*Outdoor Corp.*, 259 F3d 1101, 1106 (9th Cir. 2001); *NutraSweet Co. v. X-L Engineering Co.*, 227 F3d 776, 785-786 (7th Cir. 2000).

The Court has discretion to determine if a violation of FRCP 26(a) is "justified" or "harmless" based on several factors:

- (1) the surprise to the party against whom the evidence would be offered;
- (2) the ability of that party to cure the surprise;
- (3) the extent to which allowing the evidence would disrupt the trial;
- (4) the importance of the evidence; and
- (5) the nondisclosing party's explanation for its failure to disclose the evidence.

*Dey, L.P. v. Ivax Pharmaceuticals, Inc.*, 233 F.R.D. 567, 571 (C.D. Cal. 2005) (citing *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592 (4th Cir. 2003)). *The party facing sanctions bears the burden of proving its failure to disclose the required information was substantially justified or harmless. R & R Sails, Inc. v. Insurance Co. of Penn.*, 673 F3d 1240, 1246 (9th Cir. 2012).

### **III. DISCUSSION**

#### **A. Motion One**

In Motion One, Defendant argues that issue preclusion bars Plaintiffs from relitigating fraud issues that were previously litigated. On October 28, 2011, the SPEs filed a state court action against Defendant (the "First State Court Action"). The state court complaint alleged sixteen causes of action, including two causes of action for fraud: intentional misrepresentation and concealment [doc. 180, Exh. A]. On October 30, 2013, the SPEs dismissed Defendant with prejudice as to all causes of action asserted in the complaint (the "Dismissal Ruling") [doc. 180, Exh. B].

Here, the issue sought to be precluded from relitigation, fraud, is identical to that in the First State Court Action. "The "identical issue" requirement addresses whether "identical factual allegations" are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same." *Lucido v. Superior Court*, 51 Cal. 3d 335, 342, 795 P.2d 1223, 1225 (1990). The state court complaint in the First State Court Action asserted identical factual allegations as the FAC in the instant adversary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

proceeding. Further, the decision in the former proceedings is final and on the merits. *See Le Parc Community Ass'n v. Workers' Compensation Appeals Board*, 110 Cal. App. 4th 1161, 1174 (2003).

However, it appears the issue was not actually litigated and necessarily decided in the former proceeding. *Le Parc*, 110 Cal. App. 4th at 1174; *Rice v. Crow*, 81 Cal. App. 4th 725, 736 (2000). "A settlement which avoids trial generally does not constitute actually litigating any issues and thus prevents application of collateral estoppel." *Rice*, 81 Cal. App. 4th at 736. In Opposition One, Plaintiffs assert that the First State Court Action was dismissed because Plaintiffs lacked standing. Defendant did not state in Motion One whether the issue of fraud was actually litigated. As such, it appears the issue was not actually litigated.

One line of cases holding that a consent or stipulated judgment may properly be given collateral estoppel effect. *See California State Auto Assn. Inter-Ins. Bureau v. Superior Court*, 50 Cal. 3d 658, 664 (1990). In *California State Auto*, the California Supreme Court found that "a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms." 50 Cal. 3d at 664. Here, there was no judgment, stipulated or otherwise. Further, although the Dismissal Ruling states that it was entered pursuant to the "dismissal agreement," neither party submitted evidence regarding this dismissal agreement to show whether the parties manifested intent to be collaterally bound by its terms.

Additionally, Defendant did not meet his burden to prove that Plaintiffs are in privity with the plaintiffs in the First State Court Action. As the court stated in *Gottlieb v. Kest*, 141 Cal. App. 4th 110, 150-51 (2006),

Generally, "a corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it." (*Clean Air Transport Systems v. San Mateo County Transit Dist.* (1988) 198 Cal.App.3d 576, 578, 243 Cal.Rptr. 799; accord, *Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892, 60 Cal.Rptr.2d 815.) According to the Restatement Second of Judgments (Restatement): "The concept that a corporation is a legal entity distinct from its management and stockholders implies that issues determined against a corporation are not conclusive against its directors, officers, and stockholders, and vice versa.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, May 29, 2018

Hearing Room 301

9:30 AM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

Such a rule is appropriate with regard to a corporation whose ownership is widely held. In such a corporation, the directors and officers are charged with a fiduciary obligation to manage the corporation's affairs, including the conduct of litigation.... In a corporation whose management is a complex organization, moreover, many or all of the officers and directors often have such a remote connection with specific litigation that they cannot be said to have participated in it beyond assuming official responsibility on behalf of the corporation. To hold them bound by determinations in litigation to which the corporation is a party would in effect deny them their own day in court. The same is true of stockholders or members of such a corporation." (Rest.2d Judgments, § 59, com. e, p. 98.)

But the Restatement notes an exception for corporations that are closely held: "If the corporation is closely held, in that *one or a few persons hold substantially the entire ownership in it*, the judgment in an action ... against the corporation or the holder of ownership in it is conclusive upon the other of them as to issues determined therein as follows: [¶] ... The judgment in an action ... against the corporation is conclusive upon the holder of its ownership if he actively participated in the action on behalf of the corporation, *unless his interests and those of the corporation are so different that he should have [an] opportunity to relitigate the issue.*" (Rest.2d Judgments, § 59(3)(a), p. 94, italics added; accord, \*\*36 9A Fletcher Cyclopedic of the Law of Private Corporations (2000 rev.) § 4705, p. 484.)

As explained in the commentary to the Restatement: "When the corporation is closely held, ... [the] *interests* of the corporation's management and stockholders and the corporation itself *generally fully coincide*. By definition, the stockholders are few in number and either themselves constitute the management or have direct personal control over it. In many respects, the enterprise is a proprietorship or partnership conducted in corporate form. If the corporate form ... is adequately adhered to, the fact that interests of a closely held corporation and its proprietors are usually identical does not efface the separate legal identity of the corporation for such purposes as taxation, regulation, and the limitation of stockholders' liability to their investment in the corporation. For the purpose of affording opportunity for a day in court on issues contested in litigation, however, there is no good reason why a closely held corporation and its owners should be ordinarily regarded as

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

legally distinct. On the contrary, it may be *presumed that their interests coincide* and that one opportunity to litigate issues that concern them in common should sufficiently protect both.

Ten limited liability companies and two limited partnerships constituted the SPEs in the First State Court Action. Defendant asserts that Plaintiffs are in privity with the SPEs. Defendant points to the IPS, page three, wherein Plaintiffs listed each of the SPEs to which they held an interest. All but one of the SPEs that were the plaintiffs in the First State Court Action are listed in the IPS.

However, Defendant has not shown that Plaintiffs actively participated in the First State Court Action on behalf of the SPEs. Plaintiffs contend in Opposition One that they were not active participants in the relevant SPEs or in the First State Court Action. They purportedly were barred from prosecuting the action on behalf of the SPEs because they lacked managerial authority over them. Although Defendant has shown that Plaintiffs had a financial interest in the SPEs, Defendant has not shown that Plaintiffs were actively involved in the First State Court litigation so as to presume that their interests coincide.

Even assuming issue preclusion applied, the Court should not apply issue preclusion in this case. ‘The purposes of the doctrine are said to be to promote judicial economy by minimizing repetitive litigation, to prevent inconsistent judgments which undermine the integrity of the judicial system, and to protect against vexatious litigation.’ *Gottlieb*, 141 Cal. App. 4<sup>th</sup> at 148 (internal quotations omitted). Here, the First State Court Action was not litigated because Plaintiffs did not have standing. As such, there is no risk of repetitive litigation. Further, the SPEs in the First State Court Action voluntarily dismissed Defendant. Consequently, there is no risk of inconsistent judgments. Finally, Plaintiffs are not vexatious litigants.

***B. Motion Two***

In Motion Two, Defendant seeks to exclude the expert testimony of Mr. Garrett. Defendant asserts that Mr. Garrett failed to disclose the methodology used in calculating Plaintiffs’ damages, and without a detailed report, Defendant is exposed to surprise and extreme prejudice if Plaintiffs are allowed to call Mr. Garrett to testify regarding his expert opinions of Plaintiffs’ financial loss.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

However, as Plaintiffs point out in Opposition Two, the Court bifurcated the trial into two trials. The instant trial is only on liability.

Furthermore, on March 23, 2018, the Court ruled that even though Mr. Garrett was not disclosed as a witness pursuant to Rule 26, it was harmless. Defendant has been aware that Plaintiffs intended to call Mr. Garrett as a witness because he was listed in the IPS. Thus, it does not appear that Plaintiffs are trying to hide the ball.

Additionally, the concern that the fact-finder will be misled by the expert testimony carries little weight in regards to a bench trial. *See Volk v. United States*, 57 F. Supp. 2d 888, 896 n.5 (N.D. Cal. 1995). To the extent that Mr. Garrett's testimony is admissible, the Court is competent to determine the proper weight it should be given.

**C. Motion Three**

In Motion Three, Defendant seek to prohibit Plaintiffs from mentioning, or introducing any evidence about, the state court's default judgment entered in favor of Plaintiffs for \$7,999,022.12. On May 10, 2018, the Second Appellate District of California reversed the trial court's order denying Defendant's motion to set aside the default judgment and remanded the case for further proceedings. Because the state court judgment is not final, it does not have a preclusive effect on this Court's findings.

Despite the lack of preclusive effect of the default judgment, Defendant has not established that the default judgment is inadmissible on all potential grounds. Pursuant to Federal Rule of Evidence 201(b)(2), the Court may take judicial notice that a default judgment was entered in the State Court Action. *See, e.g., Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014) ("It is well established that we may take judicial notice of judicial proceedings in other courts."). Although the default judgment currently lacks preclusive effect, the fact that a default judgment was entered may be relevant to the present proceedings. Moreover, it is not clear that simply mentioning the default judgment would be prejudicial to Defendant. Notwithstanding the foregoing, the Court will not take judicial notice of any facts contained within the default judgment.

**IV. CONCLUSION**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

In light of the foregoing, the Court will deny the Motions.

Plaintiffs must submit the order(s) within seven (7) days.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#4.00** Defendant's Motion in limine #2 to exclude expert testimony of Jack Garrett

Docket 210

**Tentative Ruling:**

See calendar no. 3.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, May 29, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#5.00** Defendant's Motion in limine no. 3 to preclude any reference to, mention of, introduction of evidence of or eliciting testimony regarding State Court default judgment

Docket 219

**Tentative Ruling:**

See calendar no. 3.

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Trial re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18; 5/29/18

Docket 12

**Tentative Ruling:**

Regarding the issuance of an Order to Show Cause, as a result of the failure of a properly served third party witness to appear to testify at trial, the parties may refer to docket no. 2868 in *Meruelo Maddux Properties, Inc.*, case no. 1:09-bk-13356-VK, entitled, "Order to Show Cause Why Michael Meraz Should Not Be Held in Contempt for Failure to Appear Pursuant to the Subpoena Issued on February 7, 2011."

***Tentative ruling re: evidentiary objections and request for judicial notice***

**Defendant's Objections to Declaration of David Frank [doc. 208]**

para. 6: overrule

para. 8: overrule

para. 15: overrule as to "Gerson Fox expressed outright surprise that there were not enough funds in each of the operating accounts for the Default Properties."

para. 15: sustain as to "I could only conclude that he was not aware of the on-line Banking transfers."

para. 18: overrule as to "Attached hereto as Exhibit "B" and incorporated herein by this reference is a true and correct copy of the Bank Statements of Broadway Workman, LLC Operating Account from January1, 2011 until March 30, 2011."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

para. 19: overrule as to "I believe that these transfers were created to arrange for the automatic payment of the mortgage on the Property to Wells Fargo."

para. 20: overrule as to "See Exhibit "B", bate-stamped FOX00255."

para. 20: overrule as to "per Exhibit B, bate-stamped FOX-00701, indicates that the Bank Account No. 000372501200 can be identified as belonging to Mika Realty Group, LLC in the following manner."

para. 21: overrule as to "Therefore, all transfers to that account were transfers to Mika Realty Group."

para. 22: overrule

para. 23: overrule

para. 24: overrule

para. 27: overrule

para. 28: overrule

para. 31: overrule

para. 33: overrule

**Defendant's Objections to Declaration of Jack Garrett [doc. 209]**

para. 4: overrule as to "I determined from a review of the documents . . . related and controlled entity."

para. 4: overrule as to "Such was the case . . . escrow or notation for that property."

para. 5: overrule as to "Gerson and/or Gertrude Fox regularly funded his 50% interest of the Limited Liability Companies and lent Michael Kamen his required share as well."

para. 5: sustain as to "know of" and "due to lack of bookkeeping background and lack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

of information provided by Michael Kamen's staff;" overrule as to rest of excerpt

para. 6: sustain as to "Gerson Fox was requested . . . half of these cash calls as additional loans to him."

para. 7: overrule as to "For a 50% investor with a partner . . . very little formal documents for each investment."

para. 7: overrule as to "Typically a well managed company . . . annual Tax returns and ledgers."

para. 7: sustain as to "I can only assume that none of this was done to further confuse Mr. Fox and to not provide any trail for anyone to follow."

para. 8: overrule as to "The Operating Agreement states that the sole purpose of Broadway Workman, LLC was to own and operate certain property at 2625 N. Broadway, Los Angeles, CA 90031 (the "Broadway Property")."

para. 9: sustain as to "A true and correct copy of the property management agreement is attached hereto as Exhibit "B" and is incorporated herein by this reference."

para. 10: overrule as to "On August 22, 2007, Gerson Fox wired \$1,000,000 to the Mika Entities of which \$500,000 is earmarked as a loan to Michael J. Kamen."

para. 11: overrule as to "Gerson Fox wrote a check of \$44,000 to K&F Investments as an additional loan to Michael J. Kamen extending Michael J. Kamen's indebtedness to him at \$544,000."

para. 12: sustain as to "On or about February 2, 2008, Rick Barreca instructed Commerce Escrow to wire Gerson Fox \$544,000 as repayment of his loan to Michael J. Kamen."

para. 12: sustain as to "Rick Barreca also emailed Dwayne Butler instructing him to wire monies to Gerson Fox."

para. 14: overrule as to "The timing of the money put into this investment is set forth on Exhibits "C" and "D" and is incorporated herein by reference."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

para. 15: sustain as to "LaVergne Food Lion's members were (i) Gerson Fox, who owned a 25% interest; (ii) Michael Kamen who owned a 25% interest; and (iii) Gertrude Fox, who owned a 50% interest."

para. 15: sustain as to "A true and correct copy of the Operating Agreement of La Vergne Food Lion Partners, LLC is attached as Exhibit "E" and is incorporated herein by this reference."

para. 16: overrule as to "The timing of the money put into this investment is set in Exhibit "F" which is incorporated herein by this reference."

para. 18: sustain as to "In addition, my review of the Fox documents revealed that Gerson Fox made \$91,950.05 in direct payments to Rick Bareca [sic]."

para. 18: sustain as to "Some of the money may have been for loans to Rick Barreca or due to his misrepresentations."; overrule as to rest of excerpt

para. 19: sustain as to "A true and correct copy of the agreement is attached as Exhibit "G" and is incorporated herein by this reference."

para. 20: sustain as to "On or about June 21, 2007, Gerson Fox and Michael J. Kamen enter into a Limited Liability Agreement to create Covina Palms Center, LLC."

para. 20: sustain as to "Gerson Fox is listed as possessing a 50% ownership and the Michael J. Kamen Trust is listed as possessing a 50% ownership. Each party was noted to have made a \$500,000 capital contribution."

para. 20: sustain as to "A true and correct copy of the Covina Palms Limited Liability Agreement is attached as Exhibit "H" and is incorporated herein by this reference."

para. 21: sustain as to "A true and correct copy of the wire receipt is attached hereto as Exhibit "I" and is incorporated herein by this reference."

para. 22: overrule as to "The timing of the money put into this investment is set forth on Exhibit "J" and is incorporated herein by this reference."

para. 24: sustain as to "Attached hereto as Exhibits "K" and "L" are true and correct

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

copies of the 2009 and 2010 ledgers regarding the Covina Palms investment."

para. 24: sustain as to "unauthorized"; overrule as to rest of sentence

para. 24: overrule as to subparts a. through y. "On or about January 13, 2009 . . . totaling at least \$8,634.66."

para. 23 (misnumbered): sustain

para. 24 (misnumbered): sustain as to "As a general procedure . . . but not limited to the 4 (four) above investments."

para. 24 (misnumbered): sustain as to "Generally, Gerson Fox was asked for money from Rick Barreca without any definite plan or explanation of how the invested moneys would be used."

para. 24 (misnumbered): overrule as to "It is obvious that Rick Barreca was the key player in dealing with Gerson Fox with respect to all of these investments."

para. 24 (misnumbered): sustain as to "Attached as Exhibit "M" are true and correct copies of numbered some examples."

para. 25: sustain as to "It was also obvious from the documentation that Rick Barreca wanted Gerson Fox to think of him as a friend and garnered Gerson Fox's trust."

para. 25: sustain as to "It was apparent to me that Rick Barreca was trying to ingratiate himself with Gerson Fox."

para. 25: sustain as to "Even at the time, the motivation seemed geared toward taking advantage of an elderly man, Gerson Fox."

para. 25: sustain as to "In hindsight, this is more apparent."

para. 25: sustain as to "Nevertheless, any time I inquired of Rick Barreca . . . Barreca was always evasive and deceitful."

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, May 30, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 31, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Trial re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18

Docket 12

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, May 31, 2018**

**Hearing Room 301**

1:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#2.00** Order to show cause why Michael Kamen should not be held in contempt for failure to appear pursuant to the subpoena issued on April 13, 2018

Docket 252

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 01, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Trial re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18

Docket 12

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, June 04, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Trial re first amended complaint to determine dischargeability of indebtedness

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18

Docket 12

**Tentative Ruling:**

**Plaintiffs' Evidentiary Objections to Direct Testimony of Ernest Charles Barreca by Declaration [doc. 227]**

para. 3: overrule as to "While at ICB, I came to know Kamen and Gerson Fox ("Fox") in connection with their request to restructure a loan ICB had previously made to them on their Star News building in Pasadena, CA."

para. 4: overrule as to "This interaction began the relationship between me, Kamen and Fox. Over the following ten years we established a positive relationship, both personal and business."

para. 5, lines 16-18: overrule

para. 5: sustain as to "NFP was a partnership between Kamen and Scott and Patricia Schwartz, which owned parts of real property entities, many of which also included Fox as a member or a partner."

para. 5: overrule as to "where he explained he was searching for an individual to replace Scott Schwartz in his capacity in operating Kamen's property management company, Mika Realty ("Mika")"; however, not admitted for truth of the matter asserted

para. 6: sustain

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, June 04, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

para. 8: overrule

para. 19: overrule as to "The existing loan was reaching maturity and the property did not have sufficient funds left to complete the project."

para. 19: sustain as to p. 4, lines 27-28, p. 5, lines 1-14

para. 23: sustain as to lines 6-8

para. 23: sustain as to lines 9-12

para. 23: sustain as to lines 12-14

para. 28, lines 15-16, sustain

para. 30: sustain as to lines 22-24

para. 31: overrule

para. 34: overrule

para. 36: overrule as to "I could not reach Fox . . . The loan I made was never repaid."

para. 36: overrule as to "Towards the end of 2010 . . . evidencing this advance."

para. 36: sustain as to "to make sure I was handling the Business Partner loan situation"; overrule as to rest of sentence

para. 38: overrule

para. 39: overrule

para. 40: overrule

para. 41, lines 11-13: overrule

para. 41: sustain as to "Fox eventually paid the loan back to Golshan within a month's time."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, June 04, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

para. 44: sustain

para. 49: overrule

para. 51: sustain as to "Despite my working out an attractive deal to purchase the loan from FH Partners, Kamen and Fox could not agree amongst themselves on purchasing this note, even a multimillion dollar discount."

para. 51, line 21: overrule

para. 52: overrule as to "I tried numerous times to structure the purchase of the loan from Fox, but with no success;" sustain as to the rest of the paragraph

para. 54 [incorrectly stated as para. 53]: overrule as to "Fox so authorized."

para. 54: overrule as to "Donohoe successfully acquired the note, and despite constant interference from Ted Fox, the property was sold at a profit and the Soledad Canyon loan paid off."

para. 54: overrule as to "I received no compensation and the decision to let Donohoe acquire the Note cost me over \$1 million personally."

para. 55: sustain as to "FH Partners was clear that if we missed the deadline, they would be force to sell to another party who had been anxious to acquire the note"; overrule as to remainder of excerpt

para. 57: sustain as to "The property now has a value of in excess of \$10 million" and "I estimate that Fox has made over \$6 million from this property due to the bankruptcy," overrule as to the remainder of the excerpt

para. 63: overrule

para. 64: overrule

para. 65, lines 13-15: overrule

para. 65, lines 15-18: overrule

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, June 04, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ernest Charles Barreca**

**Chapter 7**

para. 65, lines 18-19: overrule

para. 65, lines 19-22: overrule as to "About 6 or 8 people had the ability to make such transfers, myself included. In fact, more than a half dozen people had signatory authority on the entity bank accounts, including Fox, and later, his son, Ted."

para. 65, lines 23-24: overrule

para. 65, lines 24-26: sustain as to "After I was fired, this practice continued with Ted Fox, over Reeder's objections."

para. 67: overrule

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, June 04, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#2.00** Order to Show Cause Why Peter Mehrian Should Not Be Held in Contempt for Failure to Appear Pursuant to the Subpoena Issued on April 9, 2018

Docket 257

**\*\*\* VACATED \*\*\* REASON: Moot as a result of appearance on 6/1/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:15-12781 Florencio Santana, Jr. and Betty Lena Santana**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

U.S. BANK TRUST N.A.  
VS  
DEBTOR

fr. 5/2/18;

Docket 82

**\*\*\* VACATED \*\*\* REASON: Notice of continued hearing filed 5/31/18.  
Hearing continued to 7/11/18 at 9:30 AM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Florencio Santana Jr.

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Betty Lena Santana

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

U.S. BANK N.A.  
VS  
DEBTOR

fr. 1/24/18; 3/7/18; 4/11/18; 5/16/18

Docket 47

**Tentative Ruling:**

Since the date of the first hearing on the motion, held on January 24, 2018, the Court has continued this hearing several times, on the parties' request.

If the parties have not resolved their dispute regarding the amount of the debtors' postpetition arrearages, in order for the Court to make that determination, the parties should be prepared to discuss the deadline for movant to file and serve its reply, and the setting of an evidentiary hearing.

**Party Information**

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10689 Geraldine S Frost**

**Chapter 13**

**#3.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 4/11/18; 6/7/18

Docket 6

**Tentative Ruling:**

Deny.

Contrary to the Court's prior ruling, the debtor has not filed a declaration supported by admissible evidence that renting the real property located at 6111 Greenbriar Drive, Fayetteville, PA 17222 will generate sufficient income to fund a chapter 13 plan. The debtor also has not filed a declaration as to whether she timely tendered her monthly chapter 13 plan payments in the amount of \$280.50 to the chapter 13 trustee.

On May 14, 2018, the debtor filed a declaration regarding her April 2018 deed of trust payment to Mr. Cooper in the amount of \$1,492 [doc. 28]. However, this amount is less than the monthly payment amount of \$2,105, as stated in the debtor's *Chapter 13 Calculation of Your Disposable Income* [doc. 22], and it does not comply with the *Interim Order on Motion for Order Imposing a Stay or Continuing the Automatic Stay* [doc. 24]. Moreover, the debtor has not filed a declaration stating that she made her May 2018 deed of trust payment.

The Court will prepare the order.

**Ruling from 4/11/18**

Grant motion on an interim basis and continue hearing to **June 6, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed. Under 11 U.S.C. 362(c)(3)(C)(i)(III), a case is presumptively filed not in good faith if there has not been a substantial change in the financial or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Geraldine S Frost**

**Chapter 13**

personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a chapter 7 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

On January 18, 2018, the debtor filed a prior chapter 13 petition [case no. 1:18-bk-10095-VK]. In her prior schedules, the debtor disclosed monthly income in the amount of \$5,289.50 and monthly expenses in the amount of \$5,009.00, leaving net monthly income of \$280.50. (Case no. 1:18-bk-10095-VK, doc. 15, at p. 27.) In her prior plan, the debtor's proposed plan payment was \$280.50 for 6 months, then \$377.73 per month for 54 months. (Case no. 1:18-bk-10095-VK, doc. 23, at p. 3.)

In her pending case, the debtor's Chapter 13 Calculation of Your Disposable Income (Official Form 122C-2) states that her disposable income is \$0. (Doc. 22, at p. 7.) In her chapter 13 plan, the debtor proposes a monthly payment of \$280.50 for 2 months, then \$842.51 for 58 months. (Doc. 5, at p. 2.) In her declaration, the debtor alleges that she paid Cedar Green Services ("Cedar Green") to assist her with saving her real property. The debtor states that Cedar Green took her money without contacting her lender. The debtor hopes to rent out her real property to generate income to pay her secured lender.

Notwithstanding these assertions and the lack of an opposition to her motion, the debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since her prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. The debtor has provided no evidence that she has sufficient net monthly income to fund a chapter 13 plan. She has provided no evidence she will be able to generate sufficient income by renting her property.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than May 10, 2018**, the debtor must file and serve notice of the continued hearing on *all* secured creditors. The debtor must (i) timely tender her postpetition deed of trust payments to Mr. Cooper in the amount of \$2,105 (as stated in her Chapter 13 Calculation of Your Disposable Income (Official Form 122C-2)) as to the real property located at 6111 Greenbriar Drive, Fayetteville, PA 17222; (ii) timely tender her chapter 13 plan payments in the amount of \$280.50 to the chapter 13 trustee; and (iii) file a declaration *supported by admissible evidence* that renting the property will generate sufficient income to fund a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Geraldine S Frost**

**Chapter 13**

chapter 13 plan. **No later than May 24, 2018**, the debtor must file a declaration to demonstrate that she made her postpetition deed of trust and chapter 13 plan payments.

The Court will prepare the order.

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

**Debtor(s):**

Geraldine S Frost

Represented By  
Shirlee L Bliss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10785 Vernon Ascot Properties, LLC**

**Chapter 11**

**#4.00** Motion for relief from stay [AN]

SAM NOR  
VS  
DEBTOR

fr. 5/2/18(stip)

Docket 27

**Tentative Ruling:**

On April 11, 2018, Sam Nor (“Movant”) filed a motion for relief from the automatic stay in the debtor’s case to proceed with a state court action against the debtor and other defendants (the “Motion”) [doc. 27]. The hearing on the Motion was initially set for May 2, 2018.

On May 1, 2018, the parties filed a *Stipulation for Continuance of Hearing on Motion for Relief of Stay* (the “Stipulation”) [doc. 40]. In the Stipulation, the parties represented that they were negotiating options for settlement of their dispute. On May 1, 2018, the Court entered an order approving the Stipulation and continuing the hearing to June 6, 2018 [doc. 41].

On May 8, 2018, the debtor filed its *Initial Status Report* (the “Status Report”) [doc. 50]. In his Declaration filed with the Status Report, the debtor’s managing member states that he has reached a settlement with Movant regarding the underlying state court action. (*See* doc. 50, Exh. A.) Moreover, the debtor has a pending motion to dismiss this case [doc. 44].

**Party Information**

**Debtor(s):**

Vernon Ascot Properties, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10886 Exotic Euro Cars, Inc.**

**Chapter 7**

**#5.00** Motion for relief from stay [AN]

22845 SPARROWDELL LLC dba PBOG  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the debtor or property of the debtor's bankruptcy estate.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Exotic Euro Cars, Inc.

Represented By  
Kahlil J McAlpin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11054 Jose Abraham Ramos-Moreno**

**Chapter 7**

**#6.00 Motion for relief from stay [PP]**

HONDA LEASE TRUST  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jose Abraham Ramos-Moreno

Represented By

Ivan M Lopez Ventura

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11213 Jesse Scott Hill, Jr**

**Chapter 13**

**#7.00** Motion for relief from stay [UD]

KITRIDGE, LLC  
VS  
DEBTOR

Docket 7

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 5/29/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jesse Scott Hill Jr

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10453 Lisa Marie Snyder**

**Chapter 13**

**#8.00** Motion for relief from stay [PP]

JP MORGAN CHASE BANK N.A.  
VS  
DEBTOR

Docket 51

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Lisa Marie Snyder

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:12-20778 Randy Gene Noble**

**Chapter 13**

**#9.00 Motion for relief from stay [RP]**

WELLS FARGO BANK NA  
VS  
DEBTOR

Docket 111

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Randy Gene Noble

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10204 Juan Talavera and Beatriz Talavera**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

Docket 48

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Talavera

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Beatriz Talavera

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11172 Madeleine Brockway**

**Chapter 13**

**#11.00** Motion for relief from stay [RP]

HSBC BANK USA, N.A.  
VS  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Madeleine Brockway

Represented By  
Tawni Takagi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11073 Ana Mata**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

This case was dismissed on May 15, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Ana Mata

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Ana Mata**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 06, 2018

Hearing Room 301

9:30 AM

1:18-10287 Gary Stephen Gelzer

Chapter 11

#13.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 59

\*\*\* VACATED \*\*\* REASON: Case dismissed on 5/16/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #14.00** Pretrial conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18; 4/11/18

Docket 30

**Tentative Ruling:**

The parties should address the following:

The defendants have not yet submitted a witness list or an exhibit list. Do the defendants intend to present the testimony of ANY witnesses (**INCLUDING** themselves) or to seek the admission of ANY exhibits?

Regarding rebuttal witnesses, a party may NOT call a witness for rebuttal, **unless that witness is identified on that party's witness list.**

Trial of this proceeding is set for **August 27, 2018** beginning at **9:30 a.m.**

**TRIAL BRIEFS:**

The plaintiff's trial brief must be filed and served **28 days** before trial (*i.e.*, **July 30, 2018**).

The defendants' trial brief must be filed and served **21 days** before trial.

Any reply brief by the plaintiffs must be filed and served **14 days** before trial.

**EXHIBITS:**

All trial exhibits must be numbered and marked as required by Local Bankruptcy Rule

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

9070-1(a). **If deposition testimony is to be offered as part of the evidence, the offering party must comply with LBR 7030-1.** The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

By **August 20, 2018**, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and two (2) copies of a notebook containing all of that party's trial exhibits.

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial date.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11026 Donnabelle Escarez Mortel**

**Chapter 7**

Adv#: 1:17-01065 UL LLC v. Mortel

**#15.00** Pretrial conference re complaint objecting to dischargeability  
of a debt

fr. 9/13/17, 2/14/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Judgment entered on 5/4/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donnabelle Escarez Mortel

Represented By  
Jeffrey J Hagen

**Defendant(s):**

Donnabelle Escarez Mortel

Pro Se

**Plaintiff(s):**

UL LLC

Represented By  
Howard Steinberg

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#16.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip); 5/2/18(stip)

**Stip to continue filed 4/19/18.**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 4/24/18.  
Hearing continued to 7/18/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13160 Shalva Shalom Krihali**

**Chapter 7**

Adv#: 1:18-01009 Zimmerman et al v. Krihali

**#17.00** Status conference re: complaint for determination of dischargeability and objection to debtor's discharge pursuant to section 523(a)(6)

fr. 3/14/18; 3/28/18

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the parties' preferred timing.

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): **6/22/18.**

Continued status conference: **7/18/18 at 1:30 p.m.**

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

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Pro Se

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**      **Shalva Shalom Krihali**  
Gabor Szabo

Represented By  
Gabor Szabo

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#18.00** Pretrial conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

fr. 1/10/18; 1/24/18

Docket 1

**Tentative Ruling:**

The Court will continue this pretrial conference to **1:30 p.m on June 20, 2018.**

Appearances on June 6, 2018 are excused.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 06, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah

**#19.00** Order to show cause re: remand

Docket 2

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ali P Dargah

Represented By  
Kevin T Simon

**Defendant(s):**

Jeff Javad Dargah

Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10689 Geraldine S Frost**

**Chapter 13**

**#1.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 4/11/18

Docket 6

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/6/18 at 9:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Geraldine S Frost

Represented By  
Shirlee L Bliss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**1:13-17080 Randy Jay Ramirez and Hermilo Hernandez**

**Chapter 7**

**#2.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Attoutants for Chapter 7 Trustee

Docket 223

**Tentative Ruling:**

On May 23, 2018, Nathan Rothman filed an objection to the pending applications for compensation by the chapter 7 trustee, her counsel, and her accountant (the "Objection") [doc. 227]. On May 24, 2018, the trustee and her professionals entered into a stipulation with Umpqua Bank (the "Stipulation") [doc. 228], to reduce fees by an aggregate of \$16,000 and provide Umpqua Bank with at least a \$50,000 distribution. Brutzkus Gubner agreed to reduce its fees by \$10,000; SLBiggs agreed to reduce its fees by \$3,000; and the trustee agreed to reduce her fees by \$3,000. On May 29, 2018, the chapter 7 trustee filed a response to the Objection [doc. 230].

The Court will overrule the Objection. As the trustee notes, Mr. Rothman has not identified any specific fees that should be disallowed. Moreover, through the Stipulation, the trustee and her professionals have agreed to reduce their fees to provide a greater distribution to unsecured creditors, including Mr. Rothman.

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$62,503.32 and reimbursement of expenses of \$4,014.37.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$171,103.00 and reimbursement of expenses of \$4,340.71.

SLBiggs, A Division of SingerLewak ("SLBiggs"), accountant to chapter 7 trustee – approve fees of \$25,140.00 and reimbursement of expenses of \$207.79.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Randy Jay Ramirez and Hermilo Hernandez**

**Chapter 7**

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

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

**Debtor(s):**

Randy Jay Ramirez

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
David Seror  
Jessica L Bagdanov  
Reed Bernet

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#3.00** First interim application for compensation and reimbursement of expenses of Michael Jay Berger

fr. 2/8/18; 3/8/18; 9/6/18(advanced)

Docket 89

**Tentative Ruling:**

Law Offices of Michael Jay Berger (“Applicant”), counsel to the debtor – approve fees in the amount of \$27,415.60 and reimbursement of expenses in the amount of \$606.60, pursuant to 11 U.S.C. § 331, for the period between September 13, 2017 through December 31, 2017, on a final basis. Applicant is authorized to receive the remaining balance of \$14,965.59 in fees and \$606.60 in expenses.

The Court will not approve \$300.00 in fees for the reasons below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**CONT... AAA Nursing Services Inc.**

**Chapter 11**

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below:

Category	Date	Name	Description	Time	Fee
Business Operations	9/15/17	YN	Review claims register and draft the proof of service per secured and unsecured the stipulation to keep the bank account open (0.5); draft the order for the stipulation (0.1); draft the notice of lodgment re same	0.5	\$100.00
Business Operations	9/18/17	YN	Research creditors phone numbers for the right department for each creditor and give telephonic notice of the hearing on client's emergency cash collateral hearing, email re same and fax re same	0.5	\$100.00
Business Operations	9/20/17	YN	Email client copy of the small business MOR with instructions	0.1	\$20.00
Business Operations	12/1/17	YN	Email J. Tanner with IRS the stipulation	0.1	\$20.00
Case Administration	12/12/17	YN	Email US Trustee copy of the quarterly payment	0.1	\$20.00
Case Administration	12/13/17	YN	Email US Trustee copy of the workers compensation insurance	0.1	\$20.00
Claims Administration and Objections	11/16/17	YN	Draft the notice of claims bar date and proof of service	0.1	\$20.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**CONT... AAA Nursing Services Inc.**

**Chapter 11**

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

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

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12887 Shigenori Yoshida and Keiko Yoshida**

**Chapter 7**

**#4.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for Chapter 7 Trustee

Docket 54

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$28,767.67 and reimbursement of expenses of \$1,906.37. The trustee is authorized to collect \$20,000.00 in fees and \$1,906.37 in expenses.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve fees of \$3,171.00 and reimbursement of expenses of \$152.22.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Shigenori Yoshida

Represented By  
Irwin M Friedman

**Joint Debtor(s):**

Keiko Yoshida

Represented By  
Irwin M Friedman



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Shigenori Yoshida and Keiko Yoshida**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

1:00 PM

1:11-10439 Navid Bahrami-Daghigh

Chapter 11

#5.00 Post confirmation status conference

fr. 4/26/12; 8/30/12; 9/6/12; 9/13/12; 01/31/13; 7/18/13; 11/14/13;  
3/13/14; 9/18/14; 3/19/15; 9/17/15; 3/17/16; 9/15/16; 3/16/17; 9/14/17;  
3/15/18

Docket 238

**Tentative Ruling:**

Based on the *Motion for Entry of Final Decree and Order Closing Case* [doc. 340] and the *Fifteenth Post-Confirmation Status Report* ("Status Report") [doc. 342], the Court will continue the post-confirmation status conference to **July 19, 2018 at 1:00 p.m.** The prior status conference was continued to allow counsel to file a final fee application. The Status Report indicates that counsel would file the final fee application to be heard on June 21, 2018. However, as of June 2, 2018, counsel has not filed a final fee application. Accordingly, there is insufficient time for the fee application to be heard on 21-days' notice pursuant to LBR 9013-1(d).

Appearances on June 7, 2018 are excused.

**Party Information**

**Debtor(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**Movant(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:14-10097 Rodney M Mojarro**

**Chapter 11**

**#6.00** Post confirmation status conference re chapter 11 case

fr. 9/3/15; 2/4/16; 8/4/16; 9/8/16; 3/9/17; 4/6/17; 8/3/17;

8/10/17;11/16/17; 12/14/17; 5/17/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's instructions from the last post-confirmation status conference, the reorganized debtor has not timely filed a post-confirmation status report pursuant to Local Bankruptcy Rule 3020-1(b).

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

**Debtor(s):**

Rodney M Mojarro

Represented By  
Michael J Jaurigue

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#7.00** Confirmation hearing re First Amended Chapter 11 Plan  
fr. 5/3/18(stip)

**Stipulation to continue filed 5/11/18**

Docket 114

**\*\*\* VACATED \*\*\* REASON: Order entered 5/14/18 approving stip to  
continue hearing to 7/19/18 at 1:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#8.00** Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip)

**Stip to continue filed 5/11/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 5/14/18 approving stip to  
continue hearing to 7/19/18 at 1:00 PM.**

**Tentative Ruling:**

The debtor has not timely filed his monthly operating report for January 2018.

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#9.00** Confirmation hearing re chapter 11 plan of reorganization

Docket 180

**Tentative Ruling:**

Confirm *Liquidating Plan of ColorFX, Inc. Presented by the Official Committee of Unsecured Creditors* dated April 20, 2018 [doc. 180]. No later than **October 4, 2018**, the Post-Confirmation Committee must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **October 18, 2018 at 1:00 p.m.**

The Official Committee of Unsecured Creditors must submit the confirmation order within seven (7) days.

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#10.00** Status conference re chapter 11 case

fr. 5/25/17; 9/7/17; 10/19/17; 12/21/17; 2/8/18; 3/29/18

Docket 1

**Tentative Ruling:**

See calendar no. 9.

**Party Information**

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#11.00** U.S. Trustee Motion to dismiss or convert under 11 U.S.C. § 1112(b)

Docket 271

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#12.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18; 5/17/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#13.00** Disclosure statement describing chapter 11 plan  
fr. 5/3/18

Docket 214

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#14.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/18; 5/17/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#15.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/17; 5/17/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#16.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17;  
2/8/18; 6/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

1:00 PM

1:17-11255 Ikechukwu Mgbeke

Chapter 11

#17.00 Status conference re chapter 11 case

fr. 6/22/17; 7/6/17; 7/13/17; 8/10/17; 9/21/17; 10/5/17;  
12/21/17; 2/8/18; 3/29/18

Docket 1

**Tentative Ruling:**

In light of the debtor's *Ex Parte Motion to Extend Deadline for Filing Debtor's Disclosure Statement and Plan of Reorganization* [doc. 110], the Court will continue this status conference to **August 2, 2018 at 1:00 p.m. No later than July 15, 2018**, the debtor must file a redline of the amended disclosure statement which takes into account any post-petition income tax liabilities, as well as projected post-confirmation income taxes.

The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on June 7, 2018 are excused.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#18.00** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17; 5/17/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **July 5, 2018 at 2:00 p.m.**, to be held with the hearing on the adequacy of the debtor's *Disclosure Statement Describing Chapter 11 Plan of Reorganization Filed by Debtor* [doc. 235].

Appearances are excused on June 7, 2018.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#19.00** Status conference re chapter 11 case

fr. 12/21/17; 1/11/18; 5/24/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's instructions during the prior status conference, the debtors did not timely file a status report. The Court will continue this status conference to **July 19, 2018 at 1:00 p.m.**, to be held with the hearing on the adequacy of the debtors' disclosure statement [doc. 59]. The debtors must file and serve a status report, **supported by evidence**, no later than **July 5, 2018**.

Appearances are excused on June 7, 2018.

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

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#20.00** Status conference re chapter 11 case  
fr. 5/17/18

Docket 1

**Tentative Ruling:**

When does the debtor anticipate filing his 2017 federal tax return with the Court?

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **August 20, 2018.**

Deadline to mail notice of Bar Date: **June 15, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **October 1, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 11, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor (s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Nasrollah Gashtili**

**Chapter 11**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10932 Bryan K Marshall**

**Chapter 7**

**#21.00** U. S. Trustee's motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) or 707(b)(3) with a 180-day bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 109(g)

Docket 10

**Tentative Ruling:**

Grant. The Court will dismiss this case with a 180-day bar to filing another bankruptcy petition in accordance with 11 U.S.C. § 109(g)(1).

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Bryan K Marshall Pro Se

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

2:00 PM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#22.00 Motion to Avoid Lien (Real Property)  
with ASD Specialty Healthcare, Inc. dba Oncology Supply

fr. 4/12/18(stip); 5/17/18

**Stipulation to continue filed 4/30/18**

Docket 99

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 5/1/18.  
Hearing continued to 6/14/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#23.00** Creditor Pogos Araik Melkonian's motion to convert debtor's case to chapter 7, or in the alternative, to appoint a chapter 11 trustee

Docket 56

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Debtors") filed a voluntary chapter 11 petition. In their schedule A/B, Debtors listed real property located at 6703 Mammoth Avenue, Van Nuys, CA 91405 (the "Van Nuys Property"). Debtors valued the Van Nuys Property at \$654,201.

In their schedule A/B, Debtors also listed interests in Custom Wood Creations, Inc. ("Custom Wood") and Millennium Beauty Salon ("Millennium"). With respect to Custom Wood, Debtors indicated that the business has assets worth \$20,000 and liabilities amounting to \$40,000. Debtors valued Custom Wood at \$0. Debtors also indicated that Mr. Kutyan has a 50% interest in Custom Wood, Ms. Kutyan has a 25% interest and Debtors' daughter has a 25% interest. As to Millennium, Debtors indicated that the salon has assets worth \$4,000 and liabilities totaling \$2,500. Debtors valued Millennium at \$750. Debtors also stated that they each have a 25% interest in Millennium, along with Ms. Kutyan's sister and brother-in-law, both of whom also hold a 25% interest each.

In total, Debtors listed \$42,744.52 in personal property. In their schedule C, Debtors claimed a \$100,000 exemption in the Van Nuys Property. Debtors otherwise claimed as exempt \$9,694.52 of the \$42,744.52 listed in personal property. Moreover, in their schedule D, Debtors listed a \$11,616 secured claim in favor of Ford Motor Credit, secured by Debtors' 2014 Ford Transit Connect. Debtors also listed a secured claim in favor of JP Morgan Chase Bank, N.A. ("Chase") in the amount of \$399,626.01. Debtors indicated that Chase's claim is contingent, unliquidated and disputed.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

In their schedule E/F, Debtors listed a \$600,000 claim in favor of Pogos Araik Melkonian. Debtors indicated that Mr. Melkonian's claim is contingent, unliquidated and disputed, and noted that the claim stems from a lawsuit currently pending in state court. Debtors did not list any other unsecured claims in their schedule E/F.

In their schedule I, Debtors indicated that they receive \$1,250.86 and \$2,337.05 per month, respectively, as compensation for their work as in-home care providers. Debtors also indicated that Mr. Kutyan receives \$4,371.83 per month operating his business, and Ms. Kutyan receives \$548.72 per month operating her business. In their schedule J, Debtors listed \$4,712.57 in expenses, resulting in a monthly net income of \$3,795.89.

In their Statement of Financial Affairs ("SOFA"), Debtors listed a total of \$306,940.24 in income from January 2017 until the petition date. Specifically, Debtors noted that Mr. Kutyan made \$181,731.52 in the first eight months of 2017 and Ms. Kutyan made \$98,904.72 in the first eight months of 2017, with the remaining income derived from Debtors' caregiving services. Debtors also listed a total of \$612,928.56 in income from 2016, with \$392,456 generated from Mr. Kutyan's business and \$177,177 generated from Ms. Kutyan's business.

On December 20, 2017, Mr. Melkonian filed claim no. 5-1, asserting an unsecured claim in the amount of \$836,699.67. Mr. Melkonian attached a state court complaint to his proof of claim (the "State Court Complaint"). In the State Court Complaint, Mr. Melkonian asserted five causes of action: (A) fraud; (B) intentional misrepresentations; (C) negligent misrepresentations; (D) fraudulent promises; and (E) breach of promissory note.

Excluding the monthly operating report ("MOR") for August 2017, which reflected income and expenses for a small part of the month, Debtors' MORs from September 2017 through April 2018 (the most recent MOR on file) reflect the following income and expenses:

<b>MONTH</b>	<b>RECEIPTS</b>	<b>DISBURSEMENTS</b>	<b>BALANCE</b>
--------------	-----------------	----------------------	----------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

2:00 PM

CONT... **Yegiya Kutyan and Haykush Helen Kutyan**

Chapter 11

September 2017	\$3,154.89	\$4,021.24	\$1,629.03
October 2017	\$8,712.65	\$8,549.20	\$1,792.48
November 2017	\$2,986.23	\$3,747.51	\$1,031.20
December 2017	\$4,789.39	\$2,596.73	\$3,223.86
January 2018	\$7,204.71	\$8,251.76	\$2,176.81
February 2018	\$3,187.60	\$3,616.48	\$1,747.93
March 2018	\$16,364.89	\$5,758.45	\$12,354.37
April 2018	\$4,964.30	\$9,319.88	\$7,998.79

On November 27, 2017, Mr. Melkonian filed a complaint against Debtors (the "Complaint"), initiating adversary proceeding 1:17-ap-01098-VK. Through the Complaint (and a subsequent amended complaint), Mr. Melkonian requested nondischargeability of his claim pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6) and (a)(19) and objected to Debtors' discharge pursuant to 11 U.S.C. § 727(a)(4). After two motions to dismiss, the Court dismissed all of Mr. Melkonian's claims under 11 U.S.C. § 523 on the basis that the claims are time barred [Adversary Docket, docs. 17, 35].

On February 28, 2018, Debtors filed a proposed chapter 11 plan (the "Plan") [doc. 46] and related disclosure statement (the "Disclosure Statement") [doc. 45]. In the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan Chapter 11**

Disclosure Statement, Debtors indicated that they anticipate \$10,000 in available cash on the effective date of the Plan. Debtors also indicated that, based on their monthly income of \$8,896.85 and monthly expenses of \$5,537.48, they anticipate having \$1,000 in disposable income available to creditors for the five year duration of the Plan. Specifically, in their attached Declaration of Current/Post-Petition Income and Expenses, Debtors indicated that they receive a combined \$3,587.91 from their work providing in-home care services.

Debtors also indicated that Mr. Kutyan's business generates \$5,158.46 per month, whereas Ms. Kutyan's business generates \$150.48 per month. Debtors listed expenses totaling \$5,537.48, including health insurance, car insurance and car installment payments. In their liquidation analysis, Debtors calculated that, based on \$165,958.99 in liquid assets, a chapter 7 case would yield 3.25% recovery to unsecured creditors, as compared to the 6.98% recovery proposed by the Plan. The Plan and the Disclosure Statement also account for additional unsecured creditors who filed claims against the estate.

On May 2, 2018, Mr. Melkonian filed a motion to convert this case to one under chapter 7, or, alternatively, to appoint a chapter 11 trustee (the "Motion") [doc. 56]. On May 24, 2018, Debtors filed amended schedules A/B, I and J [doc. 61]. The amended schedules provided additional information about the assets of Custom Wood and Millennium, and Debtors attached balance sheets for both businesses. On the same day, Debtors filed an opposition to the Motion (the "Opposition") [doc. 62] as well as a declaration from a representative of Chase regarding the parties' negotiations involving the treatment of Chase's claim in the Plan (the "Chase Declaration") [doc. 63]. On May 30, 2018, Mr. Melkonian filed a reply to the Opposition (the "Reply") [doc. 65].

## **II. ANALYSIS**

### ***A. Standing***

Debtors assert that Mr. Melkonian does not have standing on account of this Court's rulings on Debtors' motions to dismiss. Debtors are correct that the Court held that Mr. Melkonian's fraud claims are time barred under California law. However, the Court has not made any findings regarding Mr. Melkonian's breach of contract claim,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

and Debtors have not objected to Mr. Melkonian's claim.

The cases cited by Debtors do not compel a different result. In all of those cases, there existed some uncertainty as to the applicable statute of limitations, such that courts had to engage in a protracted analysis to determine the most applicable statute to the facts in those cases. For instance, in *Barton v. New United Motor Mfg., Inc.*, 43 Cal.App.4th 1200, 1206 (Ct. App. 1996), the court had to determine which statute of limitations applied to a wrongful termination lawsuit because, at the time, none of California's statutes of limitation explicitly discussed the appropriate timing for wrongful termination actions. In *Leeper v. Beltrami*, 53 Cal.2d 195, 207 (1959), the court addressed which statute of limitations applied to a duress action where no statute explicitly covered time limitations on duress.

In *Rawat v. Newton*, 2010 WL 619291, at \*5 (Ct. App. Feb. 23, 2010) (unpublished disposition), the court had already dismissed the plaintiffs' breach of contract action, such that the bulk of the remaining allegations involved fraud. In *Hensler v. City of Glendale*, 8 Cal.4th 1, 22-26 (1994), the court held that the general statutes of limitations found in California Code of Civil Procedure ("CCP") §§ 318 and 319, which apply to actions not otherwise covered by statute, did not apply where the timing of the action was covered explicitly by other statutes. In *Day v. Greene*, 59 Cal.2d 404, 411 (1963), the court held that the remedy sought by the plaintiff was for the imposition of a constructive trust based on actual fraud, and that the proper statute of limitations was thus the statute applicable to fraud actions.

None of these cases stand for the proposition that the statute of limitations applicable to fraud claims also applies to a breach of contract claim where a complaint alleges both fraud and breach of contract. Rather, these authorities merely provide analyses to guide litigants where the California legislature has not explicitly provided a statute of limitations regarding a specific cause of action. That is not the case here. CCP § 337 explicitly sets forth a four year time limitation for "[a]n action upon any contract, obligation or liability founded upon an instrument in writing...." Unlike the cases above, Mr. Melkonian's breach of contract cause of action does not present any ambiguity regarding the applicable statute of limitations. Moreover, the state court complaint attached to Mr. Melkonian's claim clearly separates Mr. Melkonian's fraud claims from his breach of contract claim. The allegations related to Mr. Melkonian's breach of contract claim against Mr. Kutyan are distinct from the allegations against

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

2:00 PM

CONT... **Yegiya Kutyan and Haykush Helen Kutyan** **Chapter 11**

all of the state court defendants involving fraud. Consequently, this also is not a case where Mr. Melkonian is asserting a fraud claim disguised as a breach of contract claim.

As a result, this Court's ruling regarding the time bar applicable to Mr. Melkonian's fraud claims does not apply to Mr. Melkonian's breach of contract claim. This Court has not adjudicated Mr. Melkonian's breach of contract claim, and Debtors have not otherwise objected to Mr. Melkonian's claim. As such, Mr. Melkonian, as a creditor asserting a claim against Debtors' estate, has standing to request conversion of Debtors' bankruptcy case.

***B. Conversion to Chapter 7***

Pursuant to 11 U.S.C. § 1112(b)—

(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(4) For purposes of this subsection, the term 'cause' includes...

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

...

(M) inability to effectuate substantial consummation of a confirmed plan....

Motions to dismiss or convert under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006). The bankruptcy court has discretion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. §1112(b). *See In re Consolidated*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

*Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to Chapter 7 is within the bankruptcy court's discretion."); and *In re Silberkraus*, 253 B.R. 890, 903 (Bankr. C.D. Cal. 2000) ("A bankruptcy court has broad discretion to convert or dismiss a chapter 11 petition for 'cause' under 11 U.S.C. § 1112(b).").

Mr. Melkonian has not provided a sound basis for conversation at this time. Mr. Melkonian bases his request for conversion on three grounds: (A) substantial or continuing loss or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross mismanagement of the estate; and (C) inability to effectuate substantial consummation of a confirmed plan.

As support for his argument that Debtors are causing substantial or continuing loss to the estate, Mr. Melkonian asserts that Debtors cannot propose a feasible chapter 11 plan based on Debtors' MORs. However, this argument is repetitive of Mr. Melkonian's contention that Debtors are unable to effectuate substantial consummation of a confirmed plan. Other than Mr. Melkonian's scrutiny of the accuracy of the MORs, Mr. Melkonian does not explain how Debtors are causing any loss or diminution of the estate. For example, there is no evidence that Debtors are inappropriately using or encumbering estate assets. Further, the MORs on which Mr. Melkonian relies do not reflect a steady decrease in monthly income. On the contrary, Debtors' monthly income appears to fluctuate from month to month. Thus, Mr. Melkonian has not demonstrated cause pursuant to 11 U.S.C. § 1112(b)(4)(A).

Mr. Melkonian also has not demonstrated that Debtors have grossly mismanaged the estate. Mr. Melkonian contends that Debtors are undervaluing their businesses and underreporting their income. However, Mr. Melkonian has not provided compelling or admissible evidence regarding the valuation of Debtors' businesses. Mr. Melkonian provides a blanket assertion that Ms. Kutyan cannot possibly make \$150 per month from her business, and that she must therefore be concealing additional income from creditors. Mr. Melkonian also argues that a visit by Mr. Melkonian's counsel's paralegal demonstrates that Ms. Kutyan must be making additional income. Observing the amount of visitors walking into Ms. Kutyan's business over the span of two days does not establish how much Ms. Kutyan is receiving in income from Millennium. Although the MORs reflect that Debtors receive less per month than anticipated, Mr. Melkonian has not shown that this discrepancy is attributable to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

mismanagement as opposed to regular fluctuations with Debtors' businesses. Mr. Melkonian has not provided evidence contradicting Ms. Kutyan's stated income in Debtors' schedules or the Declaration of Current/Post-Petition Income and Expenses attached to the Disclosure Statement.

Moreover, Mr. Melkonian's assertion that Debtors' dispute with Chase constitutes bad faith is undermined by Debtors' negotiations with Chase aimed at resolving the treatment of Chase's claim through the Plan. *See* Chase Declaration, ¶¶ 4-5. To the extent Mr. Melkonian is arguing that Debtors are artificially bloating their expenses each month, Debtors' MORs are supported by bank statements evidencing each transaction.

Mr. Melkonian relies heavily on Debtors inaccurate MOR summary attached to the Disclosure Statement. Debtors' counsel has already provided that she mistakenly included numbers related to a different case in the MOR summary. This mistake by Debtors' counsel alone does not qualify as *gross* mismanagement of an estate. As such, Mr. Melkonian also has not shown cause under 11 U.S.C. § 1112(b)(4)(B).

Lastly, Mr. Melkonian asserts that Debtors are unable to effectuate substantial consummation of a confirmed plan. Mr. Melkonian asserts that Debtors' liquidation analysis is flawed because Debtors dispute Chase's claim but take the claim into account for purposes of the liquidation analysis. At this time, the parties appear to be negotiating treatment of Chase's claim, and a determination regarding whether and to what extent Chase's claim should be included in a liquidation analysis is premature. Assuming the parties agree that Chase has a sizeable lien against the Van Nuys Property, it is likely that unsecured creditors will receive more through a chapter 11 plan than a chapter 7 liquidation.

Mr. Melkonian is correct that Debtors' MORs reflect less in monthly income than the monthly income anticipated by the Plan. The Court has set a hearing on the adequacy of the Disclosure Statement for June 14, 2018. The arguments regarding feasibility of the Plan, and whether information in the Disclosure Statement is consistent with Debtors' MORs, are more appropriately addressed in connection with a plan confirmation hearing and/or the hearing on the adequacy of the Disclosure Statement.

Mr. Melkonian has filed an objection to the Disclosure Statement on many of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 07, 2018

Hearing Room 301

2:00 PM

CONT... **Yegiya Kutyan and Haykush Helen Kutyan** **Chapter 11**

same grounds raised in the Motion. Given the information in their MORs, Debtors may have trouble demonstrating that the Plan is feasible. However, especially in light of the fact that Debtors still are negotiating the treatment of Chase's claim, that determination is premature. If Debtors are unable to confirm a feasible plan, Mr. Melkonian may argue for conversion in the future.

Based on the foregoing, Mr. Melkonian has not shown cause to convert this case to chapter 7. For the same reasons, there is no cause to appoint a chapter 11 trustee at this time.

**III. CONCLUSION**

The Court will deny the Motion.

Debtors must submit an order within seven (7) days.

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

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#24.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Approving payment of commissions; (4) Finding purchaser is a good faith purchaser; (5) Waiving Stay under Rule 6004(H); and (6) Directing turnover of real property

Docket 228

**\*\*\* VACATED \*\*\* REASON: Continued to 7/5/18 at 2:00 PM per order entered 5/24/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#25.00** Motion for protective order of application for the Rule 2004 Examination and the production of documents pursuant to Bankruptcy Rule 2004 of Deborah Lois Adri

Docket 76

**Tentative Ruling:**

The Court will continue this matter to **July 5, 2018 at 2:00 p.m.**

Contrary to Local Bankruptcy Rule ("LBR") 2004-1(a), Schuller & Schuller ("creditor") did not meet and confer before it filed its *Application for The 2004 Examination and the Production of Documents Pursuant to Bankruptcy Rules 2004 of Deborah Lois Adri* (the "2004 Application") [doc. 68]. Creditor argues that its email dated March 13, 2018 constituted its "meet and confer" effort. (Doc. 75, attachment.) However, LBR 2004-1(a) requires that any preliminary meet and confer must be made in person or telephonically. Creditor's email is not sufficient to constitute a meet and confer under LBR 2004-1(a).

Notwithstanding creditor's insufficient meet and confer efforts, the debtor is willing to produce documents requested in the 2004 Application, subject to the Court's ruling on the debtor's *Emergency Motion For Protective Order Of Application For The Rule 2004 Examination And The Production Of Documents Pursuant To Bankruptcy Rule 2004 Of Deborah Lois Adri* (the "Motion") [doc. 76]. Creditor argues that the Motion should be denied because the debtor did not meet and confer before filing the Motion. Pursuant to LBR 7026-1(c)(2), an in person or telephonic meet and confer is required before the filing of any discovery-related motion. On May 10, 2018, the debtor emailed creditor's counsel requesting a meet and confer on the day the Motion was filed. However, creditor's counsel did not respond before the Motion was filed. (Doc. 79, ¶ 3.)

Pursuant to LBR 7026-1(c)(3), in connection with a discovery motion, the parties must file a written stipulation identifying any disputed discovery issues, with contentions and points and authorities of each party as to each issue. Although the debtor has filed a chart regarding her objections to creditor's document requests [doc 102, Exh. A], this document does not comply with the requirements of LBR 7026-1(c)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**  
(3).

**Chapter 11**

In light of the foregoing, the Court will continue this matter. **No later than June 21, 2018**, the parties must file a stipulation re: discovery issues pursuant to LBR 7026-1 (c)(3).

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10785 Vernon Ascot Properties, LLC**

**Chapter 11**

**#26.00 Debtor's motion to dismiss chapter 11 case**

Docket 44

**Tentative Ruling:**

Grant, subject to payment of any outstanding fees owed to the United States Trustee.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Vernon Ascot Properties, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 07, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10785 Vernon Ascot Properties, LLC**

**Chapter 11**

**#27.00** Status conference re: chapter 11 case  
fr. 5/10/18

Docket 1

**Tentative Ruling:**

See calendar no. 26.

**Party Information**

**Debtor(s):**

Vernon Ascot Properties, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#1.00** Order to show cause (1) requiring William Hill, aka Bill Hill, to personally appear and explain his connection to this case; (2) Why William Hill, aka Bill Hill, should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110; (3) Requiring Burce Rorty to personally appear and explain by whome he was hired to appear in this case and what fees, if any, he received; and (4) Requiring Carmit Benbaruh to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18;

Docket 1

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#2.00** Motion for reconsideration to vacate order disgorging compensation  
fr. 4/5/18; 5/15/18;

Docket 66

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#3.00** Order that William Hill, aka Bill Hill, personally appear and show cause, if any, as to why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110

fr. 5/15/18

Docket 45

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#4.00** Status conference re: Leslie Richards' motion for reconsideration to vacate order for sanctions/disgorgement

fr.4/5/18; 5/15/18;

Docket 30

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, June 08, 2018**

**Hearing Room 301**

11:00 AM

**1:17-13183 Mary F Kimbell**

**Chapter 13**

- #5.00** Order to show cause  
(1) Requiring William Hill, aka Bill Hill, to personally appear and explain his connection to the case  
(2) Requiring William Hill, aka Bill Hill to explain why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. § 1101  
(3) Requiring Mary F. Kimball to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18

Docket 23

**Party Information**

**Debtor(s):**

Mary F Kimbell

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10314 Mitchell S. Cohen**

**Chapter 13**

**#47.00** Motion to avoid lien on principal residence  
with FCI Lender Services, Inc.

Docket 39

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mitchell S. Cohen

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10575 Aviva Rachel Harris**

**Chapter 13**

**#48.00** Motion to avoid junior lien on principal residence with  
Real Time Resolutions, Inc

fr. 4/10/18

Docket 10

**Tentative Ruling:**

In light of the *Secured Creditor's Withdrawal of Opposition to Motion to Avoid Lien* [doc. 26] filed on May 14, 2018, the Court will grant the motion, subject to completion of the debtor's chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

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

**Debtor(s):**

Aviva Rachel Harris

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, June 12, 2018

Hearing Room 301

10:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

#49.00 Motion for setting property value and to  
avoid junior lien on principal residence

Docket 13

**Tentative Ruling:**

**Unless an appearance is made at the hearing on June 12, 2018, the hearing is continued to July 10, 2018 at 10:30 a.m., and movant must cure the deficiencies noted below on or before June 15, 2018.**

The debtor(s) must provide documentary evidence demonstrating that PNC Bank, N.A. is the beneficiary of a second deed of trust against the real property at issue, or that PNC Bank, N.A. is the servicing agent for the related secured claim.

Assuming that PNC Bank, N.A. is the beneficiary or the servicing agent for the secured claim, the debtor(s) has (have) not properly served on PNC Bank, N.A. notice of the motion and the motion in accordance with Local Bankruptcy Rule 4003-2(c)(1) and Fed. R. Bankr. P. 7004(h), regarding service on an insured depository institution, *i.e.* service must be made by **certified mail addressed to an officer of the institution**, subject to any applicable exceptions set forth in Rule 7004(h). The address listed on the proof of service (1900 E. Ninth St., Cleveland, OH 44114) is the address for National City Bank. According to the FDIC website, National City Bank has been an inactive entity as of November 6, 2009.

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

**Debtor(s):**

Daniele C Kenney

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:12-19663 Melissa Mallare Pontanilla and Joey Patrick Pontanilla**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case due to  
expiration of the plan

fr. 4/10/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Melissa Mallare Pontanilla

Represented By  
Ali R Nader

**Joint Debtor(s):**

Joey Patrick Pontanilla

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:13-14996 Peter Ciulan and Maria Ciulan**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for Infeasibility of chapter 13 proceeding in that the plan will not pay out at its present plan payment amount (11 U.S.C. 1307(c))

Docket 60

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Peter Ciulan

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Maria Ciulan

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 3/13/18; 4/10/18;

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15221 Vicki D Blumenthal**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18;

Docket 109

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vicki D Blumenthal

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12552 Constance Lee Duncan**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18

Docket 69

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Constance Lee Duncan

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13042 Ericka Evalinda Mitchell**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18

Docket 56

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ericka Evalinda Mitchell

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14007 Jose J Navarro and Julie A Navarro**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18

Docket 55

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose J Navarro

Represented By  
John D Monte

**Joint Debtor(s):**

Julie A Navarro

Represented By  
John D Monte

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18;

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Brian Igbini

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10204 Juan Talavera and Beatriz Talavera**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18

Docket 42

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan Talavera

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Beatriz Talavera

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10038 Oganesh Pashayan and Anahit Pashayan**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oganesh Pashayan

Represented By  
Abraham Dervishian

**Joint Debtor(s):**

Anahit Pashayan

Represented By  
Abraham Dervishian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10710 Nick A Avedissian and Hripsime Avedissian**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18

Docket 31

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Nick A Avedissian

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Hripsime Avedissian

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12088 Jesse Magpantay**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure  
to make plan payments

Docket 41

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jesse Magpantay

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:12-18750 Dawn Marie Calvin**

**Chapter 13**

**#63.00** Objection to Claim Number 10 by Claimant BHEA-US Bank, c/o ECMC

Docket 69

\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 4/12/18. [Dkt. 74]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dawn Marie Calvin

Represented By  
Lindsey B Green

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:14-11870 Sandra Irene Price**

**Chapter 13**

**#64.00** Debtor's motion objecting to claim number 1 by Wells Fargo Bank, N. A.,  
DBA Wells Fargo Dealer Service, its Successors and/or Assigns

Docket 50

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 6/6/18 [Dkt.58]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sandra Irene Price

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:15-13957 Maria G. Luchero**

**Chapter 13**

**#65.00 Debtor's objection to claim by Arvest/Central Mortgage Company and notice of response deadline**

Docket 77

**Tentative Ruling:**

On March 23, 2016, Central Mortgage Company ("CMC") filed proof of a secured claim in the amount of \$348,491.44. CMC noted that the debtor owed \$30,308.93 in prepetition arrears. On February 19, 2016, the debtor filed an amended chapter 13 plan (the "Plan") [doc. 21]. In the Plan, the debtor proposed paying CMC \$542.76 per month for the duration of the Plan to cure the arrearage of \$27,138.14. On March 17, 2016, the Court entered an order confirming the Plan [doc. 44].

On February 6, 2017, the debtor and CMC entered into a stipulation for adequate protection (the "Stipulation") [doc. 61]. Through the Stipulation, the debtor agreed to cure her postpetition default of \$8,010.21. On February 7, 2017, the Court entered an order approving the Stipulation [doc. 63].

On March 13, 2018, the chapter 3 trustee filed the most recent account report [doc. 76], stating that the chapter 13 trustee has paid \$14,962.13 to CMC in accordance with the Plan, with a balance of \$15,346.80 left to be paid through the Plan.

On April 10, 2018, the debtor filed an objection to CMC's claim (the "Objection") [doc. 77]. In the Objection, the debtor states that CMC has not withdrawn its proof of claim despite the fact that the debtor is "current" on the loan. The debtor also states that she is paying monthly impound fees for taxes and insurance payments, but that CMC has not timely paid the debtor's insurance and tax payments. In its response, CMC acknowledges that the debtor is "postpetition current," but does not address the debtor's comments regarding the impound fees.

The debtor did not support the Objection with a declaration. Even if the debtor included a proper declaration, it is unclear to which portion of CMC's claim the debtor objects. To the extent the debtor asserts she is current on her postpetition mortgage payments to CMC, CMC acknowledges as much in its response. If the debtor is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Maria G. Luchero**

**Chapter 13**

asserting that she has cured the prepetition arrearages owed to CMC, the chapter 13 trustee's accounting report reflects that there is a \$15,346.80 balance before the arrearages are cured through the Plan.

In its response, CMC does not address the debtor's assertion that CMC has not timely paid the debtor's insurance and tax payments, thereby resulting in penalties assessed against the debtor. CMC should be prepared to address the impound fees and their application at the hearing on the Objection.

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

**Debtor(s):**

Maria G. Luchero	Pro Se
------------------	--------

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:16-10096 Alexander Eshaghian**

**Chapter 13**

**#66.00** Debtor's motion to incur debt as co-signer or guarantor  
of office lease

Docket 65

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Alexander Eshaghian

Represented By  
Richard T Baum

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12647 Freddy Benjamin Castro**

**Chapter 13**

**#67.00** Motion to vacate order or, in the alternative, for reconsideration of, orders avoiding lien of Deutsche Bank National Trust Company and confirming debtor's chapter 13 plan

Docket 52

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On October 27, 2005, Freddy Benjamin Castro ("Debtor") and Imelda E. Castro executed a promissory note (the "Note"), made payable to Right Away Mortgage, Inc. ("Right Away"), in the principal amount of \$103,800. Declaration of Gina D'Elia (the "D'Elia Declaration") [doc. 54], ¶ 5, Exhibit 1. The Note was secured by a second position deed of trust (the "DOT") recorded against the real property located at 14206 Pierce Street, Pacoima, California 91331 (the "Pacoima Property"). *Id.*, ¶ 5, Exhibit 2. The DOT indicated that Debtor and Ms. Castro held the Pacoima Property as joint tenants. *Id.* Subsequently, Right Away assigned the Note and DOT to Deutsche Bank National Trust Company ("Deutsche Bank").

On September 12, 2017, Debtor filed a chapter 13 petition. In his schedule A/B, Debtor listed the Pacoima Property and valued the Pacoima Property at \$370,000. In his schedule D, Debtor listed a first priority deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$416,000. Debtor also listed the second priority DOT in favor of Deutsche Bank in the amount of \$103,800.

Concurrently with his schedules, Debtor filed a proposed chapter 13 plan (the "Plan") [doc. 2]. In the Plan, Debtor indicated that he intended to avoid Deutsche Bank's lien. Plan, Section V.F. On October 26, 2016, Deutsche Bank filed an objection the Plan [doc. 13], asserting that Debtor could not avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 1322(b)(2). Deutsche Bank also objected to Debtor's valuation of the Pacoima Property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

On November 2, 2016, Deutsche Bank filed claim no. 2-1, asserting a secured claim in the amount of \$151,042.92. On December 12, 2016, Debtor filed a motion to avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 506(d) (the "Motion to Avoid Lien") [doc. 19], valuing the Pacoima Property at \$360,000. Deutsche Bank opposed the Motion to Avoid Lien [doc. 22], again asserting that applicable law prohibited avoidance of Deutsche Bank's lien and disputing Debtor's valuation of the Pacoima Property. This time, Deutsche Bank also asserted that Debtor could not release his non-debtor spouse from liability.

On January 10, 2017, the Court held an initial hearing on the Motion to Avoid Lien. At that time, the Court continued the hearing on the Motion to Avoid Lien and set deadlines for Deutsche Bank to file a competing appraisal. At the initial hearing, Martin Weingarten appeared on behalf of Deutsche Bank. According to counsel for Deutsche Bank, Mr. Weingarten did not inform Deutsche Bank about the impending deadlines. Declaration of Nichole Glowin ("Glowin Declaration") [doc. 55], ¶ 11. Nevertheless, the appearance report reflected that the hearing was "[c]ontinued per tentative." *Id.*, ¶ 11, Exhibit 10.

On March 13, 2017, Deutsche Bank and Debtor entered into a stipulation to further continue the hearing on the Motion to Avoid Lien (the "Stipulation to Continue") [doc. 26]. On March 14, 2017, the Court entered an order approving the Stipulation to Continue [doc. 29].

On April 4, 2018, the Court held a continued hearing on the Motion to Avoid Lien. Mr. Weingarten again appeared on behalf of Deutsche Bank. Prior to the continued hearing, Deutsche Bank did not timely file an appraisal, and did not otherwise request a continuance of the hearing. As a result, in light of Deutsche Bank's failure to file an appraisal timely, the Court adopted the Debtor's valuation.

On June 21, 2017, the Court entered an order granting the Motion to Avoid Lien (the "Order Avoiding Lien") [doc. 40]. On June 13, 2017, the Court held a confirmation hearing. Deutsche Bank appeared at the confirmation hearing. On June 29, 2017, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 42].

On March 28, 2018, Deutsche Bank filed a motion requesting relief from the Order to Avoid Lien and the Confirmation Order (the "Motion") [doc. 52], on the basis that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Mr. Weingarten did not inform Deutsche Bank about the deadline to file an appraisal and on the alternative basis that the Court made a mistake of law by avoiding a lien on a property in which Ms. Castro, a non-filing co-obligor on the Note and the DOT, also holds an interest. On May 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 59]. On June 7, 2018, Deutsche Bank filed an untimely reply to the Opposition (the "Reply") [doc. 60].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)—

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- ...
- (6) any other reason that justifies relief.

### ***A. Rule 60(b)(1)***

#### ***i. Excusable Neglect***

Rule 60(b)(1) is not intended to remedy "mistakes [that] arose from attorney misconduct." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006). "Neither ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1)." *Engelson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992); *see also Casey v. Albertson's, Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) ("As a general rule, parties are bound by the actions of their lawyers, and alleged attorney malpractice does not usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1).").

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [opposing party], [2] the length of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Freddy Benjamin Castro**

**Chapter 13**

the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed.2d 74 (1993).

Although *Pioneer* dealt with excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit Court of Appeals in *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382-83 (9th Cir. 1997), held that the *Pioneer* test also applies to determination of excusable neglect under Rule 60(b) ("We now hold that the equitable test set out in *Pioneer* applies to Rule 60(b) as well."). Significantly, although the trial court is granted discretion, the Court of Appeals has made clear that it is an abuse of that discretion to deny a Rule 60(b)(1) motion without considering (at a minimum) all four of the *Pioneer* factors. See *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (overturning denial of Rule 60(b)(1) motion because the trial court did not consider one of the four factors); *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing trial court's denial of Rule 60(b)(1) motion for failure to mention and consider the test in *Pioneer* and *Briones*). In *Lemoge*, the Court of Appeals further noted that although "prejudice to the movant is not an explicit *Pioneer-Briones* factor," it may be a relevant factor as one of the "'relevant circumstances' that should be considered when evaluating excusable neglect." *Lemoge*, 578 F.3d 1195.

Here, Deutsche Bank asserts that its conduct should be excused because Mr. Weingarten, Deutsche Bank's appearance attorney, neglected to inform Deutsche Bank about the filing deadlines set by the Court. For the reasons set forth below, Deutsche Bank has not demonstrated excusable neglect warranting vacating of the Order to Avoid Lien or the Confirmation Order.

*a. Prejudice to Other Parties*

Debtor will suffer prejudice if the Court vacates the Order to Avoid Lien and/or the Confirmation Order. If the Court vacates either order, Debtor will have to address how Debtor intends to treat Deutsche Bank's secured claim and will likely have to propose a modified chapter 13 plan almost a year after the Court confirmed the Plan.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Vacating the Order to Avoid Lien and/or the Confirmation Order also will result in prejudice to other creditors of the estate, who may receive distributions in amounts different than the disbursements contemplated by the Plan. In addition, almost two years after the petition date, Debtor will have to spend time and resources again litigating valuation of the Pacoima Property. As such, this factor weighs against vacating either order on account of excusable neglect.

*b. Length of Delay and its Potential Impact on Judicial Proceedings*

Rule 60(c)(1) requires that "a motion under Rule 60(b) must be made within a reasonable time . . . and no more than a year after the entry of judgment or order." "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Lemoge*, 587 F.3d at 1196.

Debtor asserts that the Motion is untimely because Deutsche Bank filed the Motion over one year after the Court issued a ruling on the Motion to Avoid Lien. However, Rule 60(b) governs relief from final judgments, *orders* or proceedings. Here, the Court entered the Order to Avoid Lien on June 21, 2017, and the Confirmation Order on June 29, 2017. Deutsche Bank filed the Motion on March 28, 2017, less than a year after the Court's entry of the orders at issue.

Although Deutsche Bank filed the Motion within the one year deadline provided by Rule 60(b), the Court must still assess whether Deutsche Bank filed the Motion within a "reasonable" time frame. Here, Deutsche Bank appeared at the confirmation hearing on June 13, 2017, at which time Deutsche Bank opposed confirmation of the Plan and raised Deutsche Bank's objection to the avoidance of its lien. The Court informed Deutsche Bank that it would confirm the Plan and avoid Deutsche Bank's lien. Rather than file a motion as soon as practical, Deutsche Bank waited eight months. Significantly, all of the information on which Deutsche Bank relies in the Motion was available to Deutsche Bank at the time the Court adjudicated both the Motion to Avoid Lien and confirmation of the Plan.

According to Deutsche Bank, it delayed filing the Motion because Deutsche Bank and Debtor continued to engage in settlement discussions. First, Deutsche Bank could

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

have filed a motion for reconsideration while continuing to discuss settlement with Debtor. The option to attempt settlement with Debtor was not mutually exclusive from seeking relief from the Order to Avoid Lien or the Confirmation Order. Second, according to Deutsche Bank itself, Deutsche Bank had trouble communicating with Debtor's counsel for several months before Deutsche Bank decided to file the Motion. Despite several months of failing to reach an agreement with Debtor, Deutsche Bank continued to delay filing the Motion. Consequently, Deutsche Bank did not file the Motion within a reasonable time.

*c. Reason for the Delay/Delay in Reasonable Control of the Movant*

Again, Deutsche Bank attributes the delay in filing the Motion to Deutsche Bank's attempt to settle with Debtor after entry of the Order to Avoid Lien and the Confirmation Order. However, Deutsche Bank could have filed the Motion while continuing to discuss settlement with Debtor. In addition, Deutsche Bank did not learn of any new evidence or law that caused Deutsche Bank to delay filing the Motion for almost one year. Because Deutsche Bank had reasonable control of the delay at all times, this factor also weighs against granting the Motion.

*d. Whether Movant Acted in Good Faith*

There is no evidence on the record demonstrating that Deutsche Bank did not act in good faith. Nevertheless, Deutsche Bank attempts to exonerate itself from responsibility with respect to missing the deadline to file its competing appraisal. Although the appearance report did not include the deadlines provided by the Court in the Court's ruling, the appearance report explicitly referred to the tentative ruling. Glowin Declaration, ¶ 11, Exhibit 10. The Court's tentative rulings are available to the public on the Court's website. Thus, Deutsche Bank could have easily accessed the deadlines set by the Court.

Even if a lack of communication between Mr. Weingarten and Deutsche Bank led to Deutsche Bank's failure to file an appraisal by the required deadline, Deutsche Bank has not provided a reasonable excuse for its delay of almost one year in bringing this Motion. As noted above, vacating the Order to Avoid Lien and/or the Confirmation Order would be extremely prejudicial to Debtor and other creditors of the estate. At the time the Court entered both orders, Deutsche Bank had all of the information and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

law on which it relies. Debtor and the other creditors should not bear the brunt of Deutsche Bank's mistake and highly belated response to the Order to Avoid Lien and/or the Confirmation Order. Under these facts, excusable neglect does not warrant vacating the orders at issue.

*ii. Mistake of Law*

The alternative basis for relief under Rule 60(b)(1) set forth by Deutsche Bank is that avoidance of Deutsche Bank's lien and confirmation of the Plan was a mistake of law. Specifically, Deutsche Bank asserts that the Court did not have the ability to release the liability of Ms. Castro, as a non-debtor, or Ms. Castro's property through either the Order to Avoid Lien or the Confirmation Order.

A chapter 13 plan may "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[.] 11 U.S.C. § 1322(b)(2). Although § 1322(b)(2) prohibits stripping of liens secured only by a debtor's principal residence, Ninth Circuit authority allows a chapter 13 debtor to strip from a primary residence any junior liens that are wholly unsecured. *In re Zimmer*, 313 F.3d 1220, 1225 (9th Cir. 2002) ("Without a secured claim, a creditor's rights may be modified.").

Here, because Deutsche Bank has not shown excusable neglect for the reasons set forth above, the Court will not consider Deutsche Bank's competing appraisal. Using the Court's original valuation of \$360,000, Deutsche Bank's lien would normally be subject to avoidance under *Zimmer*. The issue is whether the Court had the authority to strip Deutsche Bank's junior lien at all, despite Deutsche Bank's status as a wholly unsecured lienholder, if Debtor and Ms. Castro, a non-filing co-obligor, held the Pacoima Property as joint tenants.

Pursuant to 11 U.S.C. § 524(e), "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." In other words, the Court must decide if the Pacoima Property, or any part of it, constitutes "property of any other entity," such that this Court would not have authority to afford relief as to that portion of the Pacoima Property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Here, the DOT notes that Debtor and Ms. Castro hold the property as joint tenants. D'Elia Declaration, ¶ 5, Exhibit 2. In a joint tenancy, joint tenants divide a property in equal shares, with a joint tenant's share considered his or her own separate property. Cal. Civ. Code § 683(a); *see also In re Obedian*, 546 B.R. 409, 412 (Bankr. C.D. Cal. 2016). Moreover, California Evidence Code § 662 creates a record title presumption whereby the nature of ownership set forth in title to the property controls and may be rebutted only by clear and convincing evidence. The analysis is different, however, if the joint tenants are married.

On the other hand, California Family Code § 760, provides that, "except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." In 2014, the California Supreme Court issued a decision in *In re Valli*, 58 Cal.4th 1396 (2014), wherein the court addressed which statutory presumption prevailed in the context of a marital dissolution. In *Valli*, the husband had designated his wife as the "sole owner and beneficiary" on a life insurance policy, which was purchased with community property funds. *Valli*, 58 Cal.4th at 1400. Upon dissolution, the husband argued that the policy was community property despite the title of the policy being in the wife's name. *Id.* The California Supreme Court agreed, holding that the community property presumption trumps the record title presumption found in California Evidence Code § 662 in a dissolution proceeding. *Id.*, at 1406.

After *Valli*, there was some ambiguity regarding whether the community property presumption serves to override the record title presumption in a context other than a marital dissolution. At least two bankruptcy courts found that the holding in *Valli* also applied in the bankruptcy context. *Obedian*, 546 B.R. 409; *In re Collins*, 2016 WL 4570413 (Bankr. S.D. Cal. Aug. 29, 2016). Recently, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") issued a decision laying the matter to rest. *In re Brace*, 566 B.R. 13 (B.A.P. 9th Cir. 2017).

In *Brace*, the debtor and his non-debtor spouse acquired a residence and additional real properties in California as "husband and wife as joint tenants." *Id.*, at 16. The debtor and his spouse then placed the properties in an irrevocable trust, with the debtor's spouse designated as the beneficiary of the trust and the debtor acting as the sole trustee of the trust. *Id.* Subsequently, the debtor filed a chapter 7 petition. *Id.* The chapter 7 trustee then filed a fraudulent transfer action, requesting a declaration

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

that the properties were property of the estate and seeking to avoid the transfer of the properties to the trust. *Id.* The bankruptcy court ruled in favor of the chapter 7 trustee, holding that the properties were property of the estate. *Id.*

The debtor and his non-filing spouse then asked the bankruptcy court to amend the judgment to provide that the properties were owned one half by the debtor and one half by his non-filing spouse, and that only the debtor's interests in the properties were property of the estate. *Id.*, at 17. The bankruptcy court disagreed, holding that despite the record title showing that the debtor and his non-filing spouse took the properties as joint tenants, the properties were acquired with community assets and presumptively constituted community property. *Id.* After a lengthy and thorough analysis, the BAP affirmed the bankruptcy court's holding. *Id.*, at 18-28.

The BAP first assessed the holdings of *Valli* and prior Ninth Circuit case law regarding the record title presumption. *Id.*, at 18-21. In so doing, the BAP found, like *Obedian* and *Collins*, that the California Supreme Court's holding in *Valli* superseded the Ninth Circuit Court of Appeals' prior decision in *In re Summers*, 332 F.3d 1240 (9th Cir. 2003), where the Court of Appeals had held that the community property presumption is rebutted when a married couple acquires property as joint tenants. *Id.*, at 20-23.

Importantly, the BAP held that the community property presumption applies despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding and did not attempt to transmute the properties like the parties in *Valli*. *Id.*, at 23-25. Given the facts and extensive policy in *Brace*, the BAP held that "[a]lthough there may be instances where the record title presumption could apply to marital property..., as a general rule, California's community property presumption applies in disputes in bankruptcy involving the characterization of marital property." *Id.*, at 19. The BAP reached this holding: (A) despite the fact that the debtor and his non-filing spouse acquired the properties as joint tenants; (B) despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding; and (C) despite the fact that transmutation was not at issue in *Brace*, unlike in *Valli*.

In light of *Brace*, the community property presumption applies despite the fact that the title to the Pacoima Property may reflect that the parties hold the Pacoima Property as joint tenants. The record does not reflect any evidence that would serve to rebut the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

community property presumption. Under *Brace*, the mere mention of Debtor and Ms. Castro as joint tenants in the deed of trust is insufficient to rebut the presumption. In other words, the Court would need additional, strong evidence confirming that Debtor and Ms. Castro intended to take the Pacoima Property as joint tenants. Absent such evidence, the Pacoima Property is properly characterized as community property.

Pursuant to 11 U.S.C. § 541(a)(2), the commencement of a bankruptcy case creates an estate comprised, in part, of "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is... under the sole, equal, or joint management and control of the debtor; or... liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable." 11 U.S.C. § 541(a)(2)(A), (B).

Because the presumption is that the Pacoima Property is community property, upon commencement of Debtor's case, the Pacoima Property became property of the estate *in full*. As a result, the provision of 11 U.S.C. § 524(e) setting forth that the property of another entity is not relieved of liability is not applicable here.

In fact, the BAP has explicitly found that community property is subject to lien stripping under 11 U.S.C. § 506 even if only one spouse has filed for bankruptcy protection. *In re Maynard*, 264 B.R. 209 (B.A.P. 9th Cir. 2001). In *Maynard*, the debtor filed a chapter 13 petition and subsequently filed a motion to avoid a lien pursuant to 11 U.S.C § 506(d). *Id.*, at 211. The bankruptcy ruled in favor of the debtor and avoided the lienholder's lien. *Id.*, at 213.

On appeal, the lienholder argued that the bankruptcy court erred in avoiding its lien because the debtor's non-debtor spouse also held an interest in the subject property. *Id.*, at 214. The BAP disagreed. *Id.* The BAP found that, in accordance with 11 U.S.C. § 541(a)(2), the community property became property of the estate and, as a result, "the entire lien was subject to valuation and avoidance under § 506." *Id.*

Pursuant to *Brace* and *Maynard*, the Court had the authority to avoid Deutsche Bank's lien in full. Because Deutsche Bank has not demonstrated excusable neglect, *supra*, Debtor's appraisal stands as the only evidence of value of the Pacoima Property. That appraisal reflected the value of the Pacoima Property as \$360,000. Using that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

valuation, Deutsche Bank's lien was entirely unsecured, and the Court appropriately avoided Deutsche Bank's lien in accordance with the authorities above. Consequently, Deutsche Bank has not shown that the Court made a mistake of law warranting reconsideration of either the Order to Avoid Lien or the Confirmation Order.

***B. Rule 60(b)(6)***

As with Rule 60(b)(1), a request under Rule 60(b)(6) "must be made within a reasonable time." Rule 60(c)(1). For the same reasons set forth above, Deutsche Bank did not file its request for relief within a reasonable time.

Rule 60(b)(6) is the "catch-all provision" of Rule 60(b) "that is read as being exclusive of the other grounds for relief listed in Rule 60." *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 n.8 (9th Cir. 2002). "In order to obtain such relief from a judgment, however, extraordinary circumstances must exist." *In re Estrada*, 568 B.R. 533, 541 (Bankr C.D. Cal. 2017) (citing *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982)). "The burden is on the moving party to bring himself within the purviews of Rule 60(b)(6)." *In re Hammer*, 112 B.R. 341, 345 (B.A.P. 9th Cir. 1990).

First, Deutsche Bank does not provide a different basis for relief under the catch-all provision of Rule 60(b)(6). Deutsche Bank mostly relies on the same grounds as its request for relief under Rule 60(b)(1). Moreover, Deutsche Bank has not shown the type of "extraordinary circumstances" that merit relief under Rule 60(b)(6). As set forth above, the Court did not make a mistake of law that deprived Deutsche Bank of its rights. Rather, Deutsche Bank did not timely file an appraisal, and then waited nearly a year to file the Motion. Any injustice suffered by Deutsche Bank is a result of Deutsche Bank's own delay. There being no other facts showing the type of manifest injustice required for purposes of Rule 60(b)(6), the Court also will not vacate the Order to Avoid Lien or Confirmation Order under this subsection.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

**Party Information**

**Debtor(s):**

Freddy Benjamin Castro

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12984 Cheryl Lynne Tuch**

**Chapter 13**

**#68.00** Debtor's motion objecting to claim of Cavalry SPV, I, as Assignee of Chase Bank USA, N.A. (WAMU)

Docket 22

**Tentative Ruling:**

Grant; sustain objection to claim 4-1 on the Court's claim register.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Cheryl Lynne Tuch

Represented By  
Steven A Alpert

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#69.00** Motion re: objection to claim number 9,10,11,12,13,14,15,16,17  
by claimant Midland Funding LLC.

Docket 16

**\*\*\* VACATED \*\*\* REASON: Notice of voluntary dismissal of motion  
filed 5/31/18 [Dkt.23]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#70.00** Motion re: objection to claim number 19,20,21,22,23 by  
Claimant Quantum3 Group LLC as agent for MOMA Funding LLC

Docket 17

**Tentative Ruling:**

Grant; sustain objection to claims 19, 20, 21, 22 and 23 on the Court's claim register.

"[I]f a claim is challenged on the basis of standing, the party who filed the proof of claim must show that it is either the creditor or the creditor's authorized agent in order to obtain the benefits of Rule 3001(f)." *Veal v. Am. Home Mortgage Servicing, Inc. (In re Veal)*, 450 B.R. 897, 922 (9th Cir. B.A.P. 2011). Here, the debtors have challenged the standing of Quantum3 Group LLC ("Quantum") to file the claims on behalf of MOMA Funding LLC ("MOMA"). Although Quantum filed amended proofs of claim on May 25, 2018, the amended proofs of claim do not attach sufficient documentation to show that Quantum is an authorized agent for MOMA.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Tuesday, June 12, 2018

Hearing Room 301

11:30 AM

1:18-10852 Hrair Nahabedian

Chapter 13

#71.00 U.S. Trustee's Motion for order compelling attorney to file disclosure of compensation and disgorgement of fees pursuant to 11 U.S.C. § 329

Docket 10

\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 6/6/18. Dkt. #20

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hrair Nahabedian

Represented By  
Yeznik O Kazandjian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10852 Hrair Nahabedian**

**Chapter 13**

**#72.00** U.S. Trustee's motion to amend order dismissing case to include a finding of bad faith and a two-year bar to re-filing

Docket 17

**Tentative Ruling:**

Grant.

Movant must submit the amended order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Hrair Nahabedian

Represented By  
Yeznik O Kazandjian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 12, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11021 Chatchanee Johnson**

**Chapter 13**

**#73.00** U.S. Trustee's motion for order compelling attorney to file disclosure of compensation and disgorgement of fees pursuant to 11 U.S.C. § 329

Docket 12

**\*\*\* VACATED \*\*\* REASON: Voluntary Dismissal of Motion filed  
05/25/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Chatchanee Johnson

Represented By  
Nicholas M Wajda

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 3/7/18; 4/11/18; 5/9/18;

Docket 45

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
5/31/18 [doc. 58]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Movant(s):**

Wells Fargo Bank, N.A.

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11307 Eusebio Dela Cruz Valle**

**Chapter 7**

**#2.00** Motion for relief from stay [UD]

ECHAS LLC  
VS  
DEBTOR

Docket 4

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 6/8/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Eusebio Dela Cruz Valle	Pro Se
-------------------------	--------

**Trustee(s):**

David Seror (TR)	Pro Se
------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11106 Vic Saroyan**

**Chapter 7**

**#3.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

**Order of dismissal of case entered 5/18/18**

Docket 17

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 5/18/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vic Saroyan

Represented By  
Yeznik O Kazandjian

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10849 David Perez and Cynthia Margarita Perez**

**Chapter 13**

**#4.00 Motion for relief from stay [PP]**

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

David Perez

Represented By  
Todd J Roberts

**Joint Debtor(s):**

Cynthia Margarita Perez

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10774 Michel A. Contreras, IV and Carmen Contreras**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 85

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Michel A. Contreras IV

Represented By  
Rene Lopez De Arenosa Jr

**Joint Debtor(s):**

Carmen Contreras

Represented By  
Rene Lopez De Arenosa Jr

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, June 13, 2018

Hearing Room 301

9:30 AM

1:15-10035 Maria E Carrillo

Chapter 13

#6.00 Motion for relief from stay [RP]

U.S.BANK N.A.  
VS  
DEBTOR

**Stip for adequate protection filed 5/30/18**

Docket 67

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
5/31/18.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Maria E Carrillo

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12748 Mercedes Benitez**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 39

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mercedes Benitez

Represented By  
Matthew D Resnik  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12988 Parminder Singh**

**Chapter 13**

**#8.00** Motion for relief from stay [RP]

15425 SHERMAN WAY HOMEOWNERS ASSOCIATION  
VS  
DEBTOR

Docket 44

**Tentative Ruling:**

As an initial matter, the Court will not make a finding that the debtor filed this case in bad faith. On November 10, 2017, the debtor filed a motion to continue the automatic stay (the "Motion to Continue Stay") [doc. 13]. Notice of the Motion to Continue Stay was served on movant. Movant did not oppose the Motion to Continue Stay. On December 7, 2017, the Court entered an order granting the Motion to Continue Stay, on the grounds that the debtor's case was filed in good faith [doc. 19]. Such a finding is now the law of the case. "Under the [law of the case] doctrine, a court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case." *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990).

The debtor states that he will pay \$2,185.12 to movant, to cure his post-petition deficiency owing to movant. Unless he does so, there is cause for relief from the automatic stay. In addition, the Court questions the debtor's ability to stay current on his chapter 13 plan payments and his post-petition deed of trust payments to Bank of America, N.A. ("Bank of America"), with respect to the debtor's residence located at 15425 Sherman Way #354, Van Nuys, CA 91406.

In his schedules, the debtor represents that he has monthly income of \$5,200 and monthly expenses, as set forth in Schedule J of \$3,661.59, allegedly leaving \$1,538.41 in net monthly income. The debtor's expenses include payments of \$1,171.59 per month to Bank of America and \$305 per month to movant. (*See* doc. 1, pp. 33–37.) The debtor's confirmed chapter 13 plan provides for a monthly plan payment in the amount of \$1,471.77 for month one, \$0 for months two through four, and \$1,550.61



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Parminder Singh**

**Chapter 13**

for months five through 60. (*See* doc. 22 at p. 2.)

Despite the lack of plan payments to be made from months two through four, debtor has not remained current on his postpetition payments to Bank of America or to movant. On May 17, 2018, Bank of America filed a motion for relief from the automatic stay, alleging that the debtor had not made post-petition payments due for January 2018 forward. (*See* doc. 42, at p. 9.) On June 8, 2018, the debtor and Bank of America filed a stipulation for adequate protection (the "Stipulation") [doc. 53]. Pursuant to the Stipulation, the debtor agreed to cure his delinquency to Bank of America by making monthly payments of \$593.43 from May 15, 2018 to June 15, 2018, in addition to making his regular monthly deed of trust payment of \$1,204.79. (*See id.*, at p. 2.)

Given the debtor's defaults on his postpetition obligations to Bank of America and to movant, it appears that the debtor cannot successfully complete his chapter 13 plan.

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

**Debtor(s):**

Parminder Singh

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, June 13, 2018

Hearing Room 301

9:30 AM

1:17-12988 Parminder Singh

Chapter 13

#9.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

Docket 42

\*\*\* VACATED \*\*\* REASON: Order ent 6/11/18 approving stip re  
adequate protection

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Parminder Singh

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10288 Adaure Chinyere Egu**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 30

**\*\*\* VACATED \*\*\* REASON: Notice of withdrawal filed 5/31/18 [Dtk.35]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Adaure Chinyere Egu

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#11.00** Motion for relief from stay [AN]

LILLY SILBERT  
VS  
DEBTOR

Docket 53

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

1:30 PM

**1:11-11603 Kevan Harry Gilman**

**Chapter 7**

**#12.00** Status conference re: remand

Docket 577

**Tentative Ruling:**

In light of the Ninth Circuit Court of Appeals' ruling, *In re Gilman*, 887 F.3d 956 (9th Cir. 2018), the Court intends to set an evidentiary hearing to determine whether the debtor is entitled to a general homestead exemption. The parties should be prepared to discuss the following dates and deadlines:

The Court will not require a joint pretrial stipulation. Deadline to file witness lists, exhibits lists and a schedule estimating the amount of time necessary to examine each witness: 8/8/18.

Pretrial conference: 1:30 p.m. on 8/22/18.

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

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

1:30 PM

**1:12-16951 Walter James Burns**

**Chapter 13**

Adv#: 1:17-01109 Burns v. Education Credit Management Corporation et al

**#13.00** Pretrial conference re complaint to determine  
dischargeability of student loans

from: 2/14/18

Docket 3

**\*\*\* VACATED \*\*\* REASON: Order entered 4/17/18 continuing hearing  
to 8/15/18 at 1:30 PM [Dkt. 10]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Defendant(s):**

Education Credit Management

Pro Se

PHEAA

Pro Se

United States Department of

Pro Se

**Plaintiff(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11811 Brian Thomas Jones**

**Chapter 7**

Adv#: 1:17-01082 Jones v. United States Department Of Education

**#14.00** Pretrial conference re: 2nd amended complaint to determine dischargeability of student loans due to undue hardship

fr. 12/6/17

**Stip to dismiss filed 3/26/18**

Docket 7

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation to dismiss case entered 3/17/18 [Dkt.20]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brian Thomas Jones

Represented By  
David S Hagen

**Defendant(s):**

United States Department Of

Pro Se

**Plaintiff(s):**

Brian Thomas Jones

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#15.00** Trial conference on plaintiff's 11 U.S.C. § 523 claims  
[FOR RULING]

fr. 12/9/15; 4/13/16; 10/19/16; 4/19/17; 6/21/17; 9/13/17; 10/4/17; 5/11/18

Docket 1

**Tentative Ruling:**

For the reasons set forth below, the Court will enter judgment under 11 U.S.C. § 523 (a)(2)(A) in favor of Darin Davis (“Defendant”).

**I. BACKGROUND**

**A. *The Yolanda Project***

Defendant was a developer of small real estate projects. (Declaration of Darin Davis (“Davis Decl.”) [doc. 189], ¶ 2.) [FN1]. From January 20, 1989 to January 31, 2015, Defendant held a personal California General Builder Contractor’s license. (*Id.*, ¶ 3.) For many construction projects, Defendant would form a limited liability company (“LLC”) with other investors to coordinate the project. After the project was completed and sold, the LLC would distribute money to its members and Defendant would dissolve the LLC. Defendant testified that he used the LLCs for tax purposes and to insulate himself and other investors from liability.

In 1998, Defendant and Stephen Bock formed D&S Development, LLC (“D&S Development”) for the purpose of developing small real estate projects. (*Id.*, ¶ 7.) In 2001, D&S Development constructed homes in Reseda on a project called the Yolanda Project. (*Id.*, ¶ 8.) The Yolanda Project was the first time Defendant built more than four homes in a single project. (*Id.*) The Yolanda Project was owned by Yolanda, LLC, which in turn was owned by D&S Development.

**B. *The Whitman Project***

On August 30, 2002, Defendant and Mr. Bock also formed T.O. IX, LLC (“T.O.”).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

(*Id.*, ¶ 2.) Defendant and Mr. Bock created T.O. to develop nine single family residences at Whitman Court, in Thousand Oaks, California (the “Whitman Project”). (*Id.*) T.O. did not have a California general contractor’s license. (*Id.*, ¶ 3.)

As a member of T.O., Defendant was responsible for “vetting and hiring the sub-contractors, applying for and obtaining all necessary permits, and ensuring that the Whitman Project was being completed according to plans and that it complied with all permits.” (*Id.*, ¶ 4.) Defendant made the final decision on construction matters and made sure his architect and engineer obtained the necessary site and building permits. A superintendent would visit the construction sites. Defendant did not visit the sites himself.

In 2003, Defendant and an architect obtained the initial site building permits for the Whitman Project from the City of Thousand Oaks, California (the “City”). (Davis Decl., ¶ 10.) Defendant testified that his personal contractor’s license number was associated with the Whitman Project permits.

Relying on advice from legal counsel, Defendant believed it was unnecessary for D&S Development or T.O. to have a contractor’s license, because Defendant and his partners were operating as “owner/builders.” (*Id.*, ¶ 9.) Defendant also believed that D&S Development and T.O. were exempt because Defendant personally held a California general builder contractor’s license. (*Id.*)

Defendant further believed that neither D&S Development nor T.O. were allowed to hold a contractor license. Under then-operative California law, LLCs could not hold contractor licenses. [FN2] Plaintiff’s expert witness, Michael Poles, agreed with Defendant that the Contractors State License Board (“CSLB”) was not authorized to issue contractor licenses to LLCs during the relevant time periods.

T.O. did not perform any construction work itself. Instead, subcontractors were hired to perform work. MC Consulting was employed to solicit subcontractor bids. Typically, MC Consulting would solicit three bids in each category. Defendant and a project manager, Jeannie Church, would pick the best two bids and discuss them. Defendant had the final say as to which subcontractors were hired. Ms. Church prepared the subcontractor agreements and sent them out for signatures. It was Defendant’s normal course of business to check that all subcontractors were licensed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

and bonded before hiring them.

***C. Plaintiff's Contract with Defendant***

Asphalt Professionals, Inc. ("Plaintiff") is a general engineering contractor that builds roads, streets, and sidewalks. Plaintiff's president and chief executive officer, Jeffrey Ludlow, has worked for Plaintiff since 1992. Plaintiff's vice-president of operations, Matthew Ludlow, has worked for Plaintiff since approximately 2002. Matthew Ludlow had worked for Plaintiff during high school and had run his own construction company for 11 years before returning to work for Plaintiff.

Plaintiff and T.O. entered into an 11-page construction subcontract agreement dated June 2, 2004 (the "2004 Agreement"). (Trial Exh. 3.) On July 21, 2004, Jeffrey Ludlow signed the 2004 Agreement on behalf of Plaintiff. (*Id.*) On July 27, 2004, Defendant signed the 2004 Agreement on behalf of T.O. (*Id.*)

***1. T.O. as Owner/Builder***

On the first page and in the signature block of the 2004 Agreement, T.O. was listed as the "Owner/Builder" of the Whitman Project. The 2004 Agreement was defined as an agreement between "Contractor" and "Subcontractor." Plaintiff was the "Subcontractor" that agreed to perform asphalt and concrete street improvement services for the Whitman Project. The term "Contractor" was not defined. Defendant testified that T.O., as owner/builder, also acted as the "Contractor" under the 2004 Agreement. The 2004 Agreement disclosed a contractor's license number for Plaintiff. However, the 2004 Agreement did not list a contractor's license number for T.O. or for Defendant. The 2004 Agreement also contained interlineations on pages two, four, six, and ten. Jeffery Ludlow testified that he initialed each of these interlineations.

At the time T.O. and Plaintiff entered into the 2004 Agreement, Defendant never personally spoke to any employee of Plaintiff about whether T.O. was licensed or unlicensed. Matthew Ludlow testified that, before Plaintiff entered into the 2004 Agreement, he had worked on "hundreds of roadway projects." He also stated that Plaintiff's insurance policy did not allow Plaintiff to contract with unlicensed entities.

Matthew Ludlow also testified that Plaintiff had received the plans and specification

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

for the Whitman Project from Ms. Church, in her capacity as an employee of D and S Homes, Inc. (“D&S Homes”). Haaland Group, Inc. (“Haaland”), the engineering firm hired for the Whitman Project, was responsible for site plans. According to Matthew Ludlow, nothing appeared to be unusual to him until Plaintiff received the 2004 Agreement, which stated that the parties to the agreement were Plaintiff and T.O. Jeffrey Ludlow, CEO and President of Plaintiff, testified that there was no contractor’s license number listed for T.O. in the 2004 Agreement, and that he then was aware that there should have been. Matthew Ludlow and another employee of Plaintiff contacted Ms. Church to ask who T.O. was and how it was related to the Whitman Project. According to Matthew Ludlow, Ms. Church stated that “this was how the 2004 Agreement was set up,” and provided *Defendant’s* contractor license as the operative license for the Whitman Project.

Both Matthew and Jeffrey Ludlow stated that Plaintiff regularly checked the license status of subcontractors it hired, but that they never checked “upstream” to determine whether a general contractor hiring Plaintiff had a valid license.

Mr. Poles testified that T.O. had a duty to disclose to Plaintiff that it was unlicensed, or at least the 2004 Agreement should have disclosed Defendant’s personal license in connection with the Whitman Project. Mr. Poles also argued that T.O. should not have presented itself as the “Owner/Builder” of the Whitman Project, because part of the Whitman Project involved improvements to a public roadway, and T.O. was not the owner of the public roadway. Mr. Poles further testified that no subcontractor would ask a general contractor about its license status, because doing so would cause the subcontractor to lose the bid.

**2. *The As-Built Survey***

The majority of the work on the Whitman Project progressed without incident. During the construction of the Whitman Project, Plaintiff was responsible for altering a median on a public roadway. Plaintiff constructed the first 150 feet of the median curb, but stopped work when it discovered that there was a five-inch difference between the curb elevation and the street elevation. If uncorrected, such a difference in elevation would have caused water to pool on the roadway surface after it rained. A City inspector visited the site and determined that the work on the median could not proceed without a new site plan. Plaintiff then learned that the incorrect site plan for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

the median curb had been based on an outdated, as-built survey.

Defendant testified that he did not know whether the as-built survey was current, and that it was up to Haaland to review the as-built survey. Defendant said that Dale Ortmann of Haaland had given Defendant the option of using an as-built survey or re-surveying the project. Defendant decided to use the as-built survey because it seemed accurate and it would save money. Defendant did not prepare the site plans, which were Haaland's responsibility. Haaland submitted the site plans to the City, which reviewed the site plans and issued the appropriate permits. Defendant did not see the site plans before they were reviewed by the City.

Defendant did not disclose to Plaintiff the age of the as-built survey for the Whitman Project. Had Defendant disclosed that the relevant plans relied upon an outdated as-built survey, Plaintiff allegedly would not have entered into the 2004 Agreement. At trial, Jeffrey Ludlow testified that site plans based on as-built surveys were not necessarily bad. However, if an as-built survey is not recent, problems may arise because of intervening construction or ground subsidence since the date of the as-built survey. Jeffrey Ludlow further testified that if site plans had been approved by an engineer and reviewed by a governing agency, it was not Plaintiff's custom to inquire about the age of the survey used for such site plans. He further stated that Defendant never personally gave Plaintiff the bidding plans or any documentation regarding the Whitman Project.

Mr. Poles opined that Defendant should have disclosed that the as-built survey was 33 years old or commissioned a new survey. According to Mr. Poles, it was Defendant's duty to know the age of the as-built survey and to discuss this with Haaland.

During construction on the Whitman Project, Plaintiff sent several invoices to "D&S Homes, Inc." (Trial Exhs. 17–24). Defendant, Mr. Bock, and the Leon Family Trust owned 84% of D&S Homes. (Trial Exh. 4.) D&S Homes, in turn, owned 60% of T.O. (*Id.*)

After the construction problems arose, Matthew Ludlow met with Defendant and his office manager regarding the as-built survey issue. Defendant told Mr. Ludlow that he wanted a street built, and that it was Plaintiff's job to get the street built. Defendant stated he would not pay Plaintiff for the additional work to the street based on the required revision of the inaccurate site plans. Plaintiff refused to do such work

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

without payment. Between April and July 2005, Plaintiff sent D&S Homes several change orders, arising from work it had to perform as a result of the construction stoppage. (Trial Exhs. 52–55.)

On August 11, 2005, D&S Homes gave notice to Plaintiff that it had violated provisions of the 2004 Agreement. [FN3] In that letter, D&S Homes referred to the 2004 Agreement as “our contract,” and notified Plaintiff that it had “no option . . . but to terminate” the 2004 Agreement. (*Id.*) Defendant hired another subcontractor to complete the street work using the new plans. T.O. then sent Plaintiff a change order, back-charging Plaintiff in the amount of \$79,185.36 for the cost to complete the street work with the new plans and new subcontractor. (Trial Exh. 39.)

***D. Citations Against Defendant and His Entities***

In April 2004, the CSLB responded to a complaint by a homeowner regarding a title issue on the Yolanda Project. (Davis Decl., ¶ 13.) [FN4] During the course of CSLB’s investigation, Defendant first learned that he had to attach his personal contractor’s license to the contracting entity when developing a project with more than four homes. (*Id.*) On September 8, 2004, Defendant formed Fairland Construction, Inc. (“Fairland”) to act as the management company for T.O. (*Id.*, ¶ 15.) However, Defendant was not able to associate his contractor’s license to Fairland immediately. Fairland did not receive its license until May 19, 2005. (*Id.*, ¶ 16.)

While Defendant was waiting for Fairland’s license, Defendant understood that the CSLB was aware of T.O.’s unlicensed status and that the CSLB was “okay with” T.O. proceeding with work on the Whitman Project in the meantime. Defendant testified that he called the CSLB every month to update them on the Whitman Project.

At that time, Defendant believed that he had remedied the licensing issue. (Davis Decl., ¶ 16.) On May 21, 2005, T.O. entered into a construction management agreement with Fairland. (*Id.*) Neither Defendant nor Mr. Bock informed the City that Fairland was acting as the construction manager on the Whitman Project, nor did Defendant believe it was necessary to inform the City. (*Id.*, ¶ 17.)

In late 2004, another homeowner on the Yolanda Project complained to CSLB about D&S Development. (Davis Decl., ¶ 18.) As a result, on January 31, 2005, CSLB issued a citation to T.O., noting the need for a contractor’s license when constructing

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

a project with more than four homes. The violation date was noted as July 31, 2001. (*Id.*; Trial Exh. 1, at p. 4.) On April 27, 2005, D&S Development signed a stipulation to resolve the citation. (Davis Decl., ¶ 19.) The stipulation required D&S Development to “disclose that [it] is not licensed by the [CSLB] by providing a Notice to Unlicensed Person to said purchaser.” (*Id.*)

On July 27, 2007, the CSLB issued a citation to T.O. c/o Defendant, for acting in the capacity of a contractor without a license as to the Whitman Project. On July 27, 2007, the CSLB issued another citation to T.O. c/o Mr. Bock for the same violation on the Whitman Project. For both these citations, the violation date was noted as July 21, 2004. (Trial Exh. 1, pp. 1–2.)

***E. The State Court Action***

T.O. did not pay Plaintiff for all the work it performed on the Whitman Project. On September 29, 2005, Plaintiff sued T.O., Defendant and others in state court (the “State Court Action”), alleging breach of contract and foreclosure on a mechanic’s lien. (Trial Exh. B.) Plaintiff later amended the complaint, joining additional defendants to the action and adding causes of action for fraud, conspiracy, and quantum meruit. (*Id.*)

In the operative complaint in the State Court Action (the “Fourth Amended Complaint”), Plaintiff’s breach of contract and fraud causes of action were based on the same facts. (*Id.*) One of Plaintiff’s fraud counts from the State Court Action is based on Defendant’s failure to pay Plaintiff the amount owed under the 2004 Agreement. (*Id.*, pp. 12-14.) The other fraud count is based on Defendant’s alleged failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the 2004 Agreement. (*Id.*, pp. 14-15.) In the Fourth Amended Complaint, Plaintiff requested specific damages based on Defendant’s failure to pay Plaintiff under the 2004 Agreement. (*Id.*, pp. 18-20.) With respect to the fraud counts, Plaintiff requested “general damages” and punitive damages.

The trial court trifurcated the State Court Action into three trial phases. The first phase involved Plaintiff’s causes of action for breach of contract, foreclosure on a mechanic’s lien and quantum meruit. (Trial Exh. 12.) In 2010, the trial court conducted a bench trial on the first phase. On October 29, 2010, the trial court entered an interlocutory judgment as to the first phase (the “Phase One Judgment”).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

(*Id.*) After entry of the Phase One Judgment, Plaintiff filed a motion for an award of attorneys' fees. The trial court awarded Plaintiff \$1.65 million in attorneys' fees (the "Fee Award"). (Defendant's Request for Judicial Notice ("RJN"), Exh. 3.)

T.O. appealed the Fee Award. (Trial Exh. G.) On appeal, T.O. argued that the trial court erred by awarding fees to Plaintiff without apportioning counsel's work on the contract cause of action from the work on the other issues in the State Court Action. (*Id.*, at p. 3.) Plaintiff argued that apportionment was not appropriate because the trial court could reasonably find that the contract and fraud issues were "inextricably intertwined." (*Id.*, at p. 4.) The Court of Appeal agreed with Plaintiff and upheld the Fee Award. (*Id.*, at p. 12.)

***F. The Alter Ego Trial***

The second phase of the State Court Action involved Plaintiff's alter ego claims. On December 23, 2011, the state court issued a statement of decision after phase two of trial (the "Phase Two Decision"). (Trial Exh. H.) In relevant part, the Phase Two Decision reads:

Defendant [T.O.] failed to disclose to [Plaintiff] the entities that were actually involved in the construction contract;

Defendant [T.O.] failed to disclose to [Plaintiff] that it was not a licensed contractor and has never been a licensed contractor;

(*Id.*, at p. 2.) The state court also made findings that T.O., D&S Homes, D&S Development, and other entities were alter egos of Defendant. As a result, the state court held that:

[t]he liability of the [Phase One Judgment] and the [Fee Award] and any other or future order or orders awarding damages, punitive damages, attorneys fees and/or costs to [Plaintiff] against [T.O.] in this case hereby is and will be extended to defendants [D&S Homes], [D&S Development], [Defendant, Mr. Bock and Mr. Leon] . . . jointly and severally, based upon the doctrine of *alter ego*;

Each of the following defendants: [D&S Homes], [D&S

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Development], [Defendant, Mr. Bock and Mr. Leon], hereby is jointly and severally liable with [T.O.] in this case.

(*Id.*, at pp. 2–6. ) In the Phase Two Decision, the state court also made findings regarding certain entities. As to T.O., D&S Homes, and D&S Development, the state court found that each entity “used its business form as a subterfuge for an illegal transaction, to wit, contracting without a license.” (*Id.*, at pp. 7–8.) As to Defendant, the state court found:

[Defendant] represented himself to be an experienced builder with a general contractor’s license. Once [D&S Development] was cited, fined, and censured by and stipulated with [CSLB] for contracting without a license, [Defendant] formed [Fairland], and in 2005 obtained a general contractor’s license. [Defendant] and [Mr.] Bock admit that Fairland was formed to satisfy the demands of the [CSLB] and in order to comply with the contractor license laws. [Defendant] admits that after Fairland was formed and licensed “nothing changed.” [Defendant] and [Mr.] Bock continued to build as “owner/builder,” notified no one of the formation or licensure of Fairland, and continued to contract with the personal contractor’s license of [Defendant].

(*Id.*) The state court entered a judgment conforming to the Phase Two Decision (the “Phase Two Judgment”). (Trial Exh. D.)

Defendant appealed the Phase Two Judgment. (Trial Exh. I.) The appellate court upheld the Phase Two Judgment, except as against two defendants not involved in this adversary proceeding. (*Id.*, at p. 1.)

***G. Defendant’s Satisfaction of Judgment***

On June 26, 2013, Plaintiff filed an Acknowledgment of Satisfaction of Judgment (the “Satisfaction of Judgment”) in state court. (Trial Exhs. E, F.) Through the Satisfaction of Judgment and the stipulation attached thereto, Plaintiff acknowledged that the Phase One Judgment and any attorneys’ fees awarded to date had been paid in full. (*Id.*)

***H. Defendant’s Bankruptcy Case***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

On June 15, 2010, Defendant filed a voluntary chapter 7 petition. On January 12, 2011, Plaintiff filed a claim against the estate, asserting an unsecured claim in the amount of \$3 million (the “Claim”). On September 17, 2014, Defendant filed an objection to the Claim (the “Objection to Claim”) [Bankruptcy Docket, doc. 89]. In the Objection to Claim, Defendant asserted that Plaintiff had been paid the total \$1,869,048.05 owed to pursuant to the Phase One Judgment and the Phase Two Judgment. Defendant also noted that Plaintiff had not provided evidence regarding any remaining damages.

On October 2, 2014, Plaintiff filed an opposition to the Objection to Claim [Bankruptcy Docket, doc. 95], arguing that the state court had not yet tried Plaintiff’s fraud cause of action and that Plaintiff may obtain an additional award of damages after that trial. [FN5] On October 30, 2014, the Court held a hearing on the Objection to Claim. On November 20, 2014, the Court entered an order disallowing \$1,869,048.05 of the Claim because that portion of the Claim had already been paid (the “Claim Order”) [Bankruptcy Docket, doc. 101].

As to the remaining \$1,130,951.42, the Court found that this amount “is allowed . . . pending the outcome of [the fraud phase of the State Court Action], presently pending in the Superior Court of the State of California for the County of Ventura.” (emphasis added). The Court did not decide whether Plaintiff was entitled to the remaining \$1,130,951.42. The Court refrained from deciding whether to disallow the remaining portion of Plaintiff’s claim until the State Court Action concluded.

***I. The Adversary Proceeding***

On August 16, 2010, Plaintiff filed a complaint against Defendant, objecting to Defendant’s discharge pursuant to 11 U.S.C. §§ 727(a)(2) and (a)(4) and requesting nondischargeability of any debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A). The Court bifurcated this proceeding, such that the Court first heard Plaintiff’s claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on Plaintiff’s claims under 11 U.S.C. § 727 [doc. 113].

The Court initially stayed this adversary proceeding to await conclusion of the State Court Action. On April 19, 2017, nearly seven years after Defendant filed his chapter 7 petition, Plaintiff and Defendant appeared for a status conference. The Court informed the parties that it would no longer delay prosecution of this adversary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

proceeding until the State Court Action was resolved. The Court subsequently set a pretrial conference and instructed the parties to file a joint pretrial stipulation. On August 31, 2017, the parties filed their joint pretrial stipulation [doc. 140].

On October 4, 2017, the parties appeared at a continued pretrial conference. At that time, the Court informed the parties that they could file motions for summary judgment before trial. On October 13, 2017, the Court entered an order instructing the parties to file and serve their motions for summary judgment no later than November 6, 2017 [doc. 156].

On November 6, 2017, Plaintiff timely filed its motion for summary judgment ("Plaintiff's MSJ") [doc. 165]. Through Plaintiff's MSJ, Plaintiff requested the Court enter summary judgment in its favor on Plaintiff's § 523(a)(2)(A) claim based on: (A) Defendant's failure to disclose that T.O. was unlicensed; (B) Defendant's failure to disclose that Defendant relied on an as-built survey; and (C) Defendant's alleged manipulation of the construction drawings to appear as though a recent survey had been performed. To prove its damages, Plaintiff referred to the Claim Order, asserting that the Claim Order established that Plaintiff was damaged in the amount of \$1,130,951.42.

On the same day, Defendant timely filed its motion for summary judgment ("Defendant's MSJ") [doc. 162]. Through Defendant's MSJ, Defendant requested the Court enter summary judgment in its favor on the following bases: (A) a prior lawsuit precluded this Court's litigation of the issues in this adversary proceeding; and (B) all of Plaintiff's damages have been paid and Plaintiff cannot establish additional damages related to its fraud cause of action.

On February 28, 2018, the Court entered an order granting summary adjudication in favor of Plaintiff only on the following issue: that nondisclosure of T.O.'s status as an unlicensed entity would be material (the "MSJ Order") [doc. 208]. The Court otherwise denied both Plaintiff's MSJ and Defendant's MSJ. (*Id.*)

## **II. LEGAL STANDARD**

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523 (a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Darin Davis**  
U.S. 279, 291 (1991).

**Chapter 7**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor’s or an insider’s financial condition.”

To prevail on a § 523(a)(2)(A) claim, Plaintiff must prove by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor’s statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor’s statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *Turtle Rock Meadows Homeowners Ass’n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000).

**A.      *False Representation, Fraudulent Omission, or Deceptive Conduct***

“‘False representation’ refers to express misrepresentations, either oral or written.” *Dancor Constr., Inc. v. Haskell (In re Haskell)*, 475 B.R. 911, 920 (Bankr. C.D. Ill. 2012), *adhered to on reconsideration*, Case No. 11-80231, 2012 WL 4754673 (Bankr. C.D. Ill. Oct. 4, 2012).

“[S]ilence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under § 523(a)(2)(A).” *In re Evans*, 181 B.R. 508, 514 (Bankr. S.D. Cal. 1995). “Under common law, a false representation can be established by an omission when there is a duty to disclose.” *In re Eashai*, 87 F.3d 1082, 1082 (9th Cir. 1996). “[A] party to a business transaction has a duty to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

disclose when the other party is ignorant of material facts which he does not have an opportunity to discover.” *Apte v. Japra (In re Apte)*, 96 F.3d 1319, 1324 (9th Cir. 1996). “[T]he plaintiff must establish that the debtor concealed facts and that the facts concealed were material. Concealed facts are material if ‘a reasonable man would attach importance to the alleged omission in determining his course of action.’” *Evans*, 181 B.R. at 515 (quoting *Titan Group, Inc. v. Faggen*, 513 F.2d 234, 239 (2d Cir. 1975)).

“[A] false pretense refers to an implied misrepresentation of ‘conduct intended to create and foster a false impression.’” *Shannon v. Russell (In re Russell)*, 203 B.R. 303, 312 (Bankr. S.D. Cal. 1996).

***B. Knowledge of Falsity and Intent to Deceive***

[A] misrepresentation is fraudulent if the maker (a) knows or believes that the matter is not as he represents it to be, (b) does not have the confidence in the accuracy of his representation that he states or implies, or (c) knows that he does not have the basis for his representation that he states or implies.

*Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 168 (B.A.P. 9th Cir. 1999). “[Section] 523(a)(2)(A) requires that the debtor actually intend to defraud the creditor and that the debt arise as a result of the fraud.” *Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa)*, 258 B.R. 192, 198 (B.A.P. 9th Cir. 2001).

Because intent is difficult to prove through direct evidence, it “may be established by circumstantial evidence, or by inferences drawn from a course of conduct. Therefore, in determining whether the debtor had no intention to perform, a court may look to all the surrounding facts and circumstances.” *In re Barrack*, 217 B.R. 598, 607 (B.A.P. 9th Cir. 1998) (internal quotations omitted). A court may infer intent to deceive from a false representation. *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989); see also *Eashai*, 87 F.3d at 1087 (“a court may infer the existence of the debtor’s intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor”); and *Gertsch*, 237 B.R. at 167–68 (“intent to deceive can be inferred from the totality of the circumstances, including reckless disregard for the truth”).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

**C. *Justifiable Reliance***

To satisfy the reliance requirement of § 523(a)(2)(A), a plaintiff must show “justifiable” reliance, not “reasonable reliance.” *Field v. Mans*, 516 U.S. 59, 74–75, 116 S.Ct. 437, 446 (1995). Justifiable reliance takes into account the “qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases.” *Id.*, 516 U.S. at 71; 116 S.Ct. at 444. Thus, a plaintiff does not have a duty to investigate. *Id.*, 516 U.S. at 70, 75 n.12; 116 S.Ct. at 444, 446 n.12. “If, however, obvious red flags are raised, [a party] is required to investigate further.” *Haskell*, 475 B.R. at 922; *see also Apte*, 180 B.R. at 229. “[A] person cannot rely upon a representation if ‘he knows that it is false or its falsity is obvious to him.’” *Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh (In re Kirsh)*, 973 F.2d 1454, 1458 (9th Cir. 1992) (quoting Restatement (Second) of Torts § 541 (1977)).

**III. DISCUSSION**

**A. *False Representation, Fraudulent Omission, or Deceptive Conduct***

Plaintiff has not shown by a preponderance of the evidence that Defendant made a false representation, made a fraudulent omission, or engaged in deceptive conduct.

**1. *False Representation***

As for the status of T.O.’s license, Plaintiff did not establish that Defendant made an oral or written representation to Plaintiff regarding T.O.’s license status before the parties entered into the 2004 Agreement. In the 2004 Agreement, Defendant did not list a contractor’s license for T.O., and T.O. was identified as an “Owner/Builder.” When Plaintiff asked Ms. Church about the 2004 Agreement, Ms. Church gave Plaintiff the personal contractor’s license number of **Defendant** as the license number associated with the Whitman Project. Plaintiff did not call Ms. Church as a trial witness or present any evidence that Ms. Church falsely represented to Defendant that the license number belonged to T.O.

As for the as-built survey, Plaintiff did not establish that Defendant made an oral or written representation to Plaintiff regarding the age of the as-built survey before the parties entered into the 2004 Agreement. Defendant testified that he did not know the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

age of the as-built survey before he elected to use it. Haaland, not Defendant, reviewed the survey and prepare the site plans. Defendant did not see the site plans before they were reviewed by the City. Plaintiff did not call Mr. Ortmann of Haaland as a witness or present any evidence that Defendant knew the age of the as-built survey. [FN6]

**2. Fraudulent Omission**

Plaintiff did not present sufficient evidence to establish that Defendant's omission regarding T.O.'s license status was fraudulent pursuant to § 523(a)(2)(A).

In *Evans*, the debtor and the plaintiff met at their country club and formed a friendship playing golf. *Id.* at 510. Eventually, the debtor approached the plaintiff about borrowing \$110,000 to pay off a judgment lien. *Id.*

As security for part of the \$110,000 loan, the debtor executed a second deed of trust on a vacant lot he owned in favor of the plaintiff. *Id.* at 511. The debtor represented that the value of the lot exceeded the \$65,000 first deed of trust plus the \$65,000 second deed of trust and that the lot was "buildable." *Id.* at 512. However, the debtor was aware that a permit to build on the lot could not be obtained due to the lack of an adequate easement. *Id.* at 515. For this reason, the debtor had originally purchased the vacant lot for a price materially less than that of other properties in the same development. *Id.* In addition, the debtor had applied multiple times for a permit to build on the lot, and each time his application had been denied. *Id.*

The debtor did not inform the plaintiff that the lot was not buildable in its present state, that his applications for a permit had been denied, or that anyone who decided to build on the lot would have to pursue costly proceedings or purchase additional property to build an easement. *Id.* The *Evans* court found that these facts were material, that "the debtor intentionally concealed these facts to mislead the plaintiff" and that the plaintiff "undoubtedly would have attached importance [to these facts] in deciding whether or not to make the loan." *Id.*

In *Apte*, one of the debtor's corporations leased an office building from Rosewood Associates ("Rosewood"), intending to sublet the space to doctors. 96 F.3d at 1321. After failing to secure any subtenants, the debtor fell behind in lease payments to Rosewood, and Rosewood initiated an unlawful detainer action. *Id.* Soon after

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

Rosewood filed the unlawful detainer action, Dr. Romesh Japra approached the debtor about subleasing the office space. *Id.*

At the time of the lease transaction, Dr. Japra insisted that his sublease contain a priority provision that would allow him to remain in possession of the office space even if the debtor's master lease with Rosewood terminated. *Id.* After the parties signed the sublease, the debtor told Dr. Japra that Rosewood had approved the sublease, even though Rosewood had told the debtor that it would not approve the sublease until the priority provision was deleted. *Id.* In addition, the debtor told Dr. Japra that he was allowed to improve the property, even though Rosewood had told the debtor to put a stop to all construction. *Id.* The debtor never disclosed to Dr. Japra that Rosewood had filed an unlawful detainer action against the debtor or that Rosewood had previously terminated the master lease. *Id.*

The Ninth Circuit Court of Appeals found that the "myriad of nondisclosures" were material and had an effect on Dr. Japra's decision to enter into the sublease agreement. *Id.*, at 1323.

Apte carried on the sublease negotiations without disclosing that he was \$1.3 million in default on the master lease, that Rosewood had instituted an unlawful detainer action against him, that Rosewood had officially terminated the master lease, and that Rosewood would never accept a lease containing Japra's priority provision. After Japra entered into the sublease, Apte never disclosed that Rosewood had not approved it, or that Rosewood had discovered Japra's improvements and ordered the construction to stop.

*Id.* The debtor was Dr. Japra's sole source of information. The Court of Appeals found that the debtor had a duty to disclose such facts to Dr. Japra because Dr. Japra was ignorant of these facts and did not have an opportunity to discover them. *Id.* at 1324.

Unlike the debtors in *Evans* and *Apte*, Defendant did not knowingly conceal any material facts from Plaintiff before the parties entered into the 2004 Agreement. In *Evans*, the debtor concealed the material fact that the lot at issue was not buildable in its present state. In *Apte*, the debtor concealed numerous material facts from Dr. Japra. In both *Evans* and *Apte*, the respective debtors communicated directly to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

deceived parties. Here, Defendant never communicated directly to Plaintiff regarding the status of T.O.'s license. In the MSJ Order, the Court held that T.O.'s license status was a material fact. Mr. Poles testified that T.O. had a duty to disclose to Plaintiff that it was unlicensed, or at least the 2004 Agreement should have disclosed Defendant's personal license in connection with the Whitman Project. However, both Defendant and Mr. Poles testified that at the time of the 2004 Agreement, under California law, an LLC **could not hold** a contractor's license.

In *Evans*, the debtor knew that the lot was not buildable in its present state, that his applications for a permit had been denied, or that anyone who decided to build on the lot would have to pursue costly proceedings or purchase additional property to build an easement. The 2004 Agreement did not disclose a license number for T.O. and listed T.O. as an "Owner/Builder." Unlike the debtor in *Evans*, Defendant believed that T.O. could lawfully operate as an owner/builder, and that Defendant could associate his contractor's license with the Whitman Project. In short, Defendant did not knowingly conceal material facts from Plaintiff before the parties entered into the 2004 Agreement.

As noted above, Defendant had a duty to disclose "when the other party is ignorant of material facts which he does not have an opportunity to discover." *Apte*, 96 F.3d at 1324. In *Apte*, the debtor was the sole source of information for Dr. Japra. Here, if Michael and Jeffrey Ludlow were unaware that an LLC could not hold a contractor's license, Plaintiff had an opportunity to discover T.O.'s license status independently. As Matthew Ludlow and Mr. Poles testified, Plaintiff could have verified with the CSLB whether T.O. was a licensed entity. Plaintiff did not do so.

Both Matthew and Jeffrey Ludlow testified that Plaintiff would not have entered into the 2004 Agreement had they known T.O. was unlicensed. The Court does not find their testimony to be credible. Jeffrey Ludlow stated that he was aware that there was no license for T.O. disclosed in the 2004 Agreement, and that a license should have been disclosed. Matthew Ludlow stated that Plaintiff regularly checked the license status of the subcontractors they hired, because their insurance required them to do so. However, Plaintiff never checked the license status of the general contractors who hired Plaintiff.

Plaintiff also did not present sufficient evidence to establish that Defendant's omission regarding the age of the as-built survey was fraudulent pursuant to § 523(a)



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

(2)(A). As noted above, Defendant had no knowledge of the age of the as-built survey, and it was Haaland's responsibility to draw up the site plans for the Whitman Project. Mr. Poles opined that Defendant should have known and disclosed the age of the as-built survey. However, the Court finds credible Defendant's testimony that he did not know, or understand the import of, the age of the survey.

Regarding the age of the as-built survey, Jeffrey Ludlow testified that site plans based on an as-built survey are not *per se* flawed. He also testified that it was not Plaintiff's custom to inquire about the age of the surveys used for site plans that were approved by an engineer and reviewed by a governing agency. Nonetheless, Plaintiff was never misled about the age of the as-built survey, and it appears that Plaintiff could have discussed that issue with Haaland, if Plaintiff had sought to do that.

**3. Deceptive Conduct**

Plaintiff also has not established that Defendant engaged in any deceptive conduct intended to create and foster a false impression. Defendant did not act in any way to give Plaintiff the impression that T.O. had a contractor's license. Based on the evidence at trial, Ms. Church was the only individual who gave Plaintiff a contractor's license number associated with the Whitman Project, which was Defendant's license number.

**B. Knowledge of Falsity or Intent to Deceive**

To meet its burden of proof as to this element of a claim under § 523(a)(2)(A), Plaintiff must demonstrate by a preponderance of the evidence that Defendant knew that his omissions were wrongful and that Defendant's omissions were motivated by an intent to deceive Plaintiff. *Harmon*, 250 F.3d at 1246 n.4.

Plaintiff has not met its burden of showing that Defendant knew that nondisclosure of T.O. license status was wrongful. Defendant testified that at the time, he never spoke to any employee of Plaintiff about T.O.'s license status. At the time of the 2004 Agreement, Defendant was relying on the advice of counsel, and he believed that it was unnecessary for T.O. to have a contractor's license because Defendant and his partners were operating as an "owner/builder." Defendant further believed that T.O. was exempt because Defendant personally held a contractor's license. In fact, as noted above, both Defendant and Mr. Poles testified that in 2004, an LLC such as

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

T.O. *could not* hold a contractor’s license. Thus, Defendant could not have lawfully included a contractor’s license for T.O. in the 2004 Agreement. Based on the evidence at trial, Defendant did not know that his nondisclosure of T.O.’s license status was wrongful.

In addition, Plaintiff has not met its burden of showing by a preponderance of the evidence that Defendant’s omission of T.O.’s unlicensed status was motivated by an intent to deceive Plaintiff. *Harmon*, 250 F.3d at 1246 n.4. Plaintiff relied on Mr. Poles to show that Defendant acted with an intent to deceive. However, Mr. Poles does not have personal knowledge of Defendant’s intent. At trial, Mr. Poles offered legal conclusions as to Defendant’s intent. The Court would not admit such testimony even if Mr. Poles qualified as a legal expert. *See United States v. Diaz*, 876 F.3d 1194, 1197 (9th Cir. 2017) (“Consistent with [Federal Rule of Evidence] 704(a), this court has repeatedly affirmed that an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law.”) (internal quotation omitted).

As with the nondisclosure of T.O.’s license status, Plaintiff has not met its burden of showing that Defendant knew that his nondisclosure of the age of the as-built survey was wrongful. Defendant testified that he did not know the age of the as-built survey, and that Mr. Ortmann at Haaland had given Defendant the option of using the as-built survey or commissioning a new survey. Defendant chose to use the as-built survey because it was the cheaper option. Defendant did not prepare the site plans, which were Haaland’s responsibility. Defendant also did not see the site plans before they were reviewed by the City.

Because Plaintiff has not demonstrated that Defendant had any knowledge of the age of the as-built survey, Plaintiff cannot demonstrate that Defendant’s omission was motivated by an intent to deceive. As noted above, Mr. Poles is not qualified to testify as to Defendant’s intent. In addition, none of the evidence presented at trial established that Defendant, prior to Plaintiff’s entry into the 2004 Agreement, had any reason to believe the as-built survey was unreliable.

**C. Justifiable Reliance**

As noted above, a plaintiff does not have a duty to investigate. *Field*, 516 U.S. at 70, 75 n.12; 116 S.Ct. at 444, 446 n.12. However, where a party ignores obvious “red

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

flags” and fails to investigate further, there is no justifiable reliance. *Haskell*, 475 B.R. at 922.

In *Winston-Salem City Employees’ Fed. Credit Union v. Casper (In re Casper)*, 466 B.R. 786 (Bankr. M.D.N.C. 2012), a credit union hired the debtor to assist with selling repossessed vehicles. After each vehicle was repossessed, the credit union would deliver the vehicle to the debtor, but retain the certificate of title. When the debtor sold each vehicle, the credit union would deliver to the debtor the certificate of title with the security interest released. Within two days after the certificate of title was delivered, the debtor would typically remit the sale proceeds to the credit union. On rare occasions, the debtor would take longer than the customary two days, but there were never any extended delays. However, starting in June 2009, the debtor did not remit the sale proceeds to the credit union for 10 vehicles. By October 2009, nearly six months later, the credit union began asking the debtor about the 10 missing payments. The debtor told the credit union he would pay. In November 2009, the credit union again confronted the debtor, and the debtor told the credit union he was having “issues.” *Id.* at 791–92.

After the debtor filed a chapter 7 petition, the credit union filed an adversary proceeding, seeking nondischargeability of the debt owed, in part, under § 523(a)(2) (A). The court denied relief under § 523(a)(2)(A), finding that the credit union’s reliance was not justifiable because it “disregarded critical warning signs.” *Id.* at 794. The court noted that the credit union’s reliance as to the first unpaid-for vehicle was justifiable, based on the occasional prior delay. However, after the second unpaid-for vehicle, the credit union “should have been put on notice that something had gone awry.” *Id.*

Continuing to assign the titles of vehicles to [the debtor’s company] with the expectation of receiving payment was not justifiable. A creditor must react in a timely fashion upon discovery of the falsity of a debtor’s representation if justifiable reliance is to be established. . . . The [credit union] here—a sophisticated actor that is in the business of loaning and collecting money—blindly ignored numerous red flags by continuing to do business with the [d]ebtor even after he repeatedly failed to remit monies to the [credit union] after the sale of a vehicle.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

*Id.* at 795 (citation omitted).

Like the credit union's reliance in *Casper*, Plaintiff's reliance regarding T.O.'s license was not justifiable. Plaintiff ignored numerous red flags before entering into the 2004 Agreement, and Plaintiff's testimony regarding its reliance on the 2004 Agreement is not credible.

Both of Plaintiff's principals are sophisticated, experienced construction professionals who have worked on hundreds of constructions projects, all of which likely required agreements similar to the 2004 Agreement. The 2004 Agreement is an 11-page agreement and appears to be a standard form subcontract agreement. The 2004 Agreement was dated June, 2, 2004, and Jeffrey Ludlow signed the 2004 Agreement on July 21, 2004. Plaintiff took nearly 50 days to review the 2004 Agreement before signing it, and Jeffrey Ludlow made several interlineations to the 2004 Agreement. As noted above, on the first page and in the signature block of the 2004 Agreement, T.O. was listed as the "Owner/Builder" of the Whitman Project. The 2004 Agreement was defined as an agreement between "Contractor" and "Subcontractor." Plaintiff was the "Subcontractor" that agreed to perform asphalt and concrete street improvement services for the Whitman Project. The term "Contractor" was not defined. The 2004 Agreement *clearly* did not list a contractor's license number for T.O. or for Defendant.

Matthew Ludlow testified that after Plaintiff received the 2004 Agreement from Ms. Church, Plaintiff had questions about the identity of T.O. In response to Plaintiff's questions, Ms. Church stated that "this was how the 2004 Agreement was set up" and gave Plaintiff the personal contractor's license number of Defendant. Jeffrey Ludlow testified that there should have been a license number associated with T.O. stated in the 2004 Agreement.

Notwithstanding the evident red flags, Plaintiff did not insist that the license number be expressly incorporated into the 2004 Agreement, and did not ask Defendant to amend the 2004 Agreement to more clearly define T.O.'s role. Despite its initial concerns, Plaintiff entered into the 2004 Agreement and proceeded to work on the Whitman Project. As noted above, Plaintiff could have verified T.O.'s license status with the CSLB, but Plaintiff chose not to do that. Plaintiff's present allegation—that it would not have entered into the 2004 Agreement had it known T.O. was unlicensed—appears to be a belated attempt to transform a standard breach of contract

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

action into a fraud action against Defendant.

Mr. Poles testified that subcontractors generally did not question the license status of their general contractors, because a subcontractor would risk losing their bid if they did so. This testimony is not credible. As both Mr. Poles and Matthew Ludlow admitted, anyone could inquire of the CSLB to verify the status of a contractor's license. A subcontractor could make such an inquiry without notifying the general contractor.

Plaintiff's reliance on the site plans based on the as-built survey appears to have been justifiable. Plaintiff's employees testified that their job was to perform construction work according to site plans, and that it was not their practice to question site plans that are stamped by the engineer and reviewed by the City. However, Plaintiff has not established that Defendant acted with any knowledge of falsity or intent to deceive Plaintiff as to the as-built survey.

#### **IV. CONCLUSION**

Pursuant to 11 U.S.C. § 523(a)(2)(A), the Court will enter judgment in favor of Defendant.

Defendant must submit a proposed judgment within seven (7) days.

#### **FOOTNOTES**

1. Unless otherwise indicated, the facts are derived from testimony at trial.
2. In 2010, the Contractors State License Board was authorized to issue contractor licenses to limited liability companies. Cal. Bus. & Prof. Code § 7025 (amended by Stats. 2010, Ch. 698, Sec. 2. [SB 392]).
3. At trial, Plaintiff introduced the August 11, 2005 letter as an exhibit to impeach Defendant's testimony. Defendant did not contest the authenticity of the letter or otherwise object to the letter.
4. On November 23, 2004, the CSLB issued a citation to D&S Development

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

regarding the Yolanda Project, for acting in the capacity of a contractor without a license. (Trial Exh. 1, p. 3.) The citation stated that the date of the alleged violation was August 3, 2001. This citation appears to have arisen from the first complaint regarding the Yolanda Project.

5. On October 15, 2014, after all the briefing on the Objection to Claim, Plaintiff filed a separate claim for \$2 million, based on the fraud action in state court. In his declaration, Jeffrey Ludlow states that the \$2 million claim was meant to amend the original \$3 million claim. (Declaration of Jeffrey Ludlow [doc. 179], ¶ 12.) The Court did not use this proof of claim in its calculation because the proof of claim was filed after the parties completed their briefing.
6. Mr. Poles also argued that T.O. should not have presented itself as the owner/builder of the Whitman Project, because part of the Whitman Project involved improvements to a public roadway, and T.O. was not the owner of the public roadway. However, this issue was not identified in the parties' joint pretrial stipulation. Moreover, Plaintiff's area of expertise is paving and roadway construction. If an owner/builder cannot develop a project involving improvements to a public roadway, it appears that Plaintiff would have been aware of such a bar against owner/builders soliciting bids for such developments.

**Party Information**

**Attorney(s):**

Danning, Gill, Diamond & Kollitz,

Represented By  
Michael G D'Alba

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Interested Party(s):**

Carolyn Davis

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Ana Vasquez  
Alan W Forsley

Rodney H Dixon

Pro Se

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#16.00** Defendant's motion in limine to preclude plaintiff from introducing evidence of damages and evidence to determine dischargeability of debts

fr. 5/16/18

Docket 24

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On March 31, 2017, Amie Suzanne Greenberg ("Defendant") filed a voluntary chapter 7 petition.

On June 26, 2017, Jeff Rubin ("Plaintiff") filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(15). Through the Complaint, Plaintiff requests nondischargeability of \$43,411.66, plus interest, awarded to Plaintiff by the family court in the parties' dissolution proceeding (the "Family Court Order"). Complaint, Exhibit 1. Plaintiff also requests \$4,438.28 "for the children's medical, therapy and educational expenses." *Id.* In the Family Court Order, the family court ordered that Defendant pay Plaintiff \$38,411.66 in attorneys' fees and costs incurred by Plaintiff as well as a sanction of \$5,000. The Family Court Order also stated that Defendant was to reimburse Plaintiff for "one-half the costs of the minor children's therapy with Dr. Gold," but does not provide a specific amount.

On August 23, 2017, the Court held an initial status conference. The joint status report [doc. 6] the parties prepared in preparation for the initial status conference indicated that the parties had not complied with Federal Rule of Bankruptcy Procedure ("FRBP") 7026. As such, on August 24, 2017, the Court entered an order [doc. 8] continuing the status conference and instructing the parties to comply with



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

FRBP 7026 by, among other things, providing initial disclosures to one another.

On September 29, 2017, the parties filed a joint discovery plan (the "Discovery Plan") [doc. 13]. In the Discovery Plan, Plaintiff stated that he believed Defendant had the same documents in her possession that Plaintiff had, but that any initial disclosures would be made by October 2, 2017 in accordance with the Court's scheduling order.

On October 25, 2017, the Court held a continued status conference. At the continued status conference, the Court asked the parties about the status of their initial disclosures. Plaintiff stated that he and Defendant were the only individuals with discoverable information. In addition, the parties stated that they each had proof of payments made by Defendant. The Court instructed the parties to exchange all of those documents. Regarding a computation of damages, Plaintiff indicated at the status conference that he had previously provided a schedule of payments to Defendant.

On October 30, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 14]. Through the Scheduling Order, the Court set the following dates and deadlines: (A) January 31, 2018 as the discovery cutoff date; (B) February 15, 2018 as the last day to file pretrial motions; (C) March 21, 2018 as the deadline by which the parties must file a pretrial stipulation; and (D) April 4, 2018 as the pretrial conference.

On April 12, 2018, Plaintiff filed a substitution of counsel, indicating that Plaintiff retained counsel to represent him in this action [doc. 37]. On February 12, 2018, Defendant filed a motion in limine (the "Motion") [doc. 24], asking the Court to prohibit Plaintiff from introducing evidence of damages based on Plaintiff's failure to timely provide initial disclosures in accordance with Federal Rule of Civil Procedure 26(a). Plaintiff opposes the Motion [doc. 40].

## **II. ANALYSIS**

Pursuant to Rule 26(a)(1)—

- (A) *In General*. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Amie Suzanne Greenberg**

**Chapter 7**

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii) a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
- (iii) a computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Under Rule 37(c)—

- (1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
  - (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
  - (B) may inform the jury of the party's failure; and
  - (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

The Court has discretion to determine if a violation of Rule 26(a) is "justified" or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

"harmless" based on several factors:

- (1) the surprise to the party against whom the evidence would be offered;
- (2) the ability of that party to cure the surprise;
- (3) the extent to which allowing the evidence would disrupt the trial;
- (4) the importance of the evidence; and
- (5) the nondisclosing party's explanation for its failure to disclose the evidence.

*Dey, L.P. v. Ivax Pharmaceuticals, Inc.*, 233 F.R.D. 567, 571 (C.D. Cal. 2005) (citing *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592 (4th Cir. 2003)). *The party facing sanctions bears the burden of proving its failure to disclose the required information was substantially justified or harmless. R & R Sails, Inc. v. Insurance Co. of Penn.*, 673 F.3d 1240, 1246 (9th Cir. 2012).

Here, although Plaintiff admits to not having timely provided initial disclosures to Defendant, the failure to do so was harmless. First, Plaintiff informed Defendant at the initial status conference that he believed only Plaintiff and Defendant had discoverable information, and that Plaintiff would be relying on documents available to both parties, namely, the family court's findings and orders. As such, most of the initial disclosures Plaintiff would have provided are not a surprise to Defendant.

The main disclosure Defendant asserts is missing is a computation of damages outlining how Plaintiff reached the \$4,438.28 amount for the parties' children's medical, therapy and educational expenses. However, Plaintiff has now cured the surprise by providing his initial responses to Defendant and by supplementing those responses one week later. In light of the fact that the Court has not yet set trial of this matter, the fact that Defendant belatedly received some of the Rule 26(a) disclosures will not disrupt any future trial.

Moreover, because the Court intends to extend the deadline by which the parties may file pretrial motions, Defendant will have an opportunity to file another motion disputing the damages claimed by Plaintiff now that she has received Plaintiff's initial disclosures. Whether the documentation provided by Plaintiff supports his claim of damages is not a complex issue that will unduly delay this matter or require an extensive amount of research or resources to adjudicate. Finally, Plaintiff has explained that he did not timely provide initial disclosures to Defendant because he

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

was confused by the requirements of Rule 26(a) and believed Defendant already had all of the information she needed. At the time Plaintiff did not comply with Rule 26 (a), he was acting in pro per. Now that Plaintiff has retained counsel, Plaintiff appears to be curing his deficient disclosures.

Based on the above, Plaintiff has shown that all of the factors weigh in favor of deeming Plaintiff's belated production of initial disclosures "harmless." As a result, the Court will not impose sanctions under Rule 37(c).

**III. CONCLUSION**

The Court will deny the Motion.

Plaintiff must submit an order within seven (7) days.

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Represented By  
Sevan Gorginian

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#17.00** Defendant's Motion for summary judgment

fr. 5/16/18

Docket 19

**Tentative Ruling:**

The Court will grant summary adjudication as to the issue of partial satisfaction in the amount of \$6,900. The Court will deny summary adjudication on all other issues.

**I. BACKGROUND**

**A. *The Family Court Proceedings***

Jeffrey Rubin ("Plaintiff") and Amie Greenberg ("Defendant") were married. On November 3, 2008, Plaintiff filed a petition for dissolution in Ventura County Superior Court, case no. D330558. Defendant concurrently filed a petition in Los Angeles County Superior Court, case no. KD074715 (the "Family Court"). On January 29, 2009, the parties stipulated to transfer the Ventura action to the Family Court. (Complaint, doc. 1, ¶ 8.)

On February 1, 2011, the Family Court entered the parties' divorce decree (the "Divorce Decree"). (*Defendant's Separate Statement of Uncontroverted Facts and Conclusions of Law Pursuant to Local Rule 7056.1* ("Defendant's Statement"), doc. 23, ¶ 3; Defendant's Request for Judicial Notice ("RJN"), doc. 22, Exh. B.) The Divorce Decree provided that "[e]ach party shall pay one-half the cost of future therapy with Dr. Gold for the minor children." (RJN, Exh. B, ¶ 12.)

On July 8, 2011, five months after the Divorce Decree was entered, Defendant filed an ex parte request for an order to show cause, "requesting immediate orders modifying the previous child custody and visitation orders and granting to her legal and physical custody" of the parties' two children ("Defendant's OSC Request"). (Declaration of Amie Greenberg ("Defendant's Decl."), doc. 21, ¶ 22; RJN, Exh. A, at p. 7.) In Defendant's OSC Request, Defendant alleged that Plaintiff had abused their children.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

(Defendant's Decl., ¶ 23; RJN, Exh. A, pp. 7–12.)

On September 4, 2012, the Family Court issued its *Findings and Orders of the Court on the Submitted Matter of [Defendant's] Order to Show Cause Filed July 8, 2011; and Court's Order to Show Cause on its Own Motion Under Family Code Section 3027.1* (the "September 2012 Order"). (Complaint, ¶ 9; Defendant's Decl., ¶ 19; RJN, Exh. A.) The September 2012 Order ordered the following: (a) Defendant individually shall pay to Plaintiff attorneys' fees and costs, as sanction, in the amount of \$38,411.66, pursuant to Family Code § 3027.1, for false reporting of child abuse; (b) Defendant shall pay Plaintiff attorneys' fees and costs as a sanction under Family Code § 271 the amount of \$5,000; and (c) Defendant shall reimburse Plaintiff one-half the cost of the minor children's therapy with Dr. Gold, pursuant to the Divorce Decree. (Defendant's Decl., ¶¶ 20, 39–40; RJN, Exh. A, at p. 37.) The September 2012 Order set a subsequent hearing on why the foregoing sanctions should not be imposed on Defendant. (RJN, Exh. A, at p. 38.)

At the hearing on November 14, 2012, the Family Court stated, regarding the September 2012 Order:

[The Divorce Decree] doesn't say any other doctors. It says Dr. Gold. So that's a fixed liquid amount and then other therapists and other health care providers fall within child support and add ons to child support if not covered by that specific language in the judgment. That's what I did when I made that decision.

(Defendant's Decl., Exh. F, at p. 213.)

On December 21, 2012, the Family Court issued an order directing Defendant to pay Plaintiff "as for attorney's fees and costs as a sanction, the amount of \$38,411.66 without interest, pursuant to *Family Code* Section 3027.1, due and payable in full within 30 days of November 14, 2012" (the "December 2012 Order"). (Defendant's Statement, ¶ 35; RJN, Exh. C, at p. 75 (emphasis in original).)

***B. Defendant's Bankruptcy Case and the Pending Adversary***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT... **Amie Suzanne Greenberg**  
*Proceeding*

Chapter 7

On March 31, 2017, Defendant filed a voluntary chapter 7 petition, commencing case no. 1:17-bk-10825-VK. On July 3, 2017, Defendant received a chapter 7 discharge [case no. 1:17-bk-10825-VK, doc. 25]. On October 16, 2017, Defendant's chapter 7 case was closed [case no. 1:17-bk-10825-VK, doc. 44].

On June 26, 2017, Plaintiff filed the pending adversary proceeding *in pro per*, seeking a determination that the debts owed to him by Defendant are nondischargeable pursuant to 11 U.S.C. §§ 523(a)(15) (the "Complaint") [doc. 1]. In the Complaint, Plaintiff alleged that the September 2012 Order provided for "payment of sanctions in favor of Plaintiff the amount of \$43,411.66 plus interest[,] and "payment of \$4,438.28 for the children's medical, therapy and educational expenses." (Complaint, ¶ 10.) On July 21, 2017, Defendant filed an answer to the Complaint [doc. 5].

Plaintiff did not serve Defendant with his initial disclosures. On December 19, 2017, Defendant served discovery on Plaintiff. (Defendant's Decl., ¶ 4.) On January 23, 2018, Plaintiff served his discovery responses on Defendant. (*Id.*, ¶ 5.) The following chart summarizes the relevant requests for admissions ("RFA") and Plaintiff's responses:

RFA	Plaintiff's Response
<b>REQUEST NUMBER TWO:</b> Admit that You have received payments from Amie Greenberg on the debt in the amount totaling \$6,900. (Defendant's Decl., Exh. G, at p. 226.)	Admit. (Defendant's Decl., Exh. G, at p. 306.)
<b>REQUEST NUMBER THIRTEEN:</b> Admit that on November 14, 2012, the State Court in its order entered December 21, 2012 order ordered [sic] that Amie Greenberg individually shall pay to Jeffrey Rubin as for attorney's fees and costs as a sanction, the amount of \$38,411.66, without interest. (Defendant's Decl., Exh. G, at p. 227.)	I can neither Admit nor Deny as statement is incomplete and does include the time period in which the payment was required to be paid in full. (Defendant's Decl., Exh. G, at p. 305.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT...

**Amie Suzanne Greenberg**

**Chapter 7**

<p><b><u>REQUEST NUMBER SIXTEEN:</u></b> Admit that the debt in the amount of \$5,000 awarded in the September 4, 2012 order is not a debt for alimony, maintenance or support. (Defendant's Decl., Exh. G, at p. 228.)</p>	<p>Admit. (Defendant's Decl., Exh. G, at p. 306.)</p>
<p><b><u>REQUEST NUMBER SEVENTEEN:</u></b> Admit that the debt in the amount of \$38,411.66 awarded in the September 4, 2012 Order and in the December 12, 2012 Order is not a debt for alimony, maintenance or support. (Defendant's Decl., Exh. G, at p. 228.)</p>	<p>Admit. (Defendant's Decl., Exh. G, at p. 306.)</p>
<p><b><u>REQUEST NUMBER FORTY:</u></b> Admit that the debt is not a domestic support obligation as defined in 11 U.S.C. § 101 (14A). (Defendant's Decl., Exh. G, at p. 232.)</p>	<p>Deny. (Defendant's Decl., Exh. G, at p. 307.)</p>
<p><b><u>REQUEST NUMBER SIXTY-FOUR:</u></b> Admit that the September 4, 2012 Order does not order Petitioner to reimburse You \$4,438.28 for the minor children's medical, education and therapy expenses. (Defendant's Decl., Exh. G, at p. 235.)</p>	<p>Deny as it was implied that the cost of therapy, medical and educational [sic] be equally shared regardless of the therapist. The Transcripts from the hearing on November 14, 2012, specifically addresses that on Page 27. (Defendant's Decl., Exh. G, at p. 309.)</p>

In addition, in response to Defendant's interrogatory no. 17, Plaintiff stated that he was entitled to interest on the sanctions awards because Defendant did not pay them within 30 days, as ordered by the Family Court. (Defendant's Decl., Exh. L, at p. 327.)

On February 12, 2018, Defendant filed a *Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56* (the "Motion") [doc. 19] and a supporting memorandum of points and authorities (the "Memorandum") [doc. 20]. Defendant also filed a supporting declaration [doc. 21] and the RJN [doc. 22].

On April 12, 2018, Plaintiff filed a substitution of attorney, indicating that he had obtained counsel [doc. 37]. On April 20, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 40] and a *Statement of Genuine Issues in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment* [Adv. Dkt. 19]



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg Chapter 7**

("Plaintiff's Statement") [doc. 41]. Plaintiff does not dispute that the September 2012 Order provided, in part, that Defendant shall reimburse Plaintiff one-half the costs of the minor children's therapy with Dr. Gold. (Plaintiff's Statement, at p. 2.) However, Plaintiff disputes Defendant's contention that there are no triable issues of fact as to Plaintiff's claim for \$4,438.28 for the children's medical, therapy, or educational expenses. Plaintiff also contends that he is entitled to post-judgment interest as a matter of California law. (*Id.*, at p. 5.)

On May 2, 2018, Defendant filed her reply (the "Reply") [doc. 47]. In the Reply, Defendant asks the Court not to consider the Opposition because it was untimely served. Defendant alleges that she did not receive the Opposition until May 2, 2018, the day that the Reply was due. The Court continued the hearing on the Motion from May 16, 2018 to June 13, 2018.

## **II. THE MOTION**

Defendant seeks summary judgment on Plaintiff's claim for relief under 11 U.S.C. § 523(a)(15). Defendant argues that the monies awarded as sanctions by the Family Court constitute a debt that was incurred post-dissolution, and thus not incurred "in connection with" the parties' dissolution proceedings. On these grounds, Defendant seeks a determination that the debt owed to Plaintiff is dischargeable.

## **III. LEGAL STANDARDS**

### ***A. General Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

fact." 477 U.S. at 247–48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. See *Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.* at 324; see also *Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); see also *Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**     **Amie Suzanne Greenberg**  
*Anderson*, 477 U.S. at 266).

**Chapter 7**

**B.     11 U.S.C. § 523(a)(15)**

Pursuant to 11 U.S.C. § 523(a)(15), a bankruptcy discharge does not discharge an individual debtor from any debt:

to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit[.]

A plaintiff seeking a determination of nondischargeability under § 523(a)(15) must establish three elements:

(1) that the debt in question is owed to a [spouse,] former spouse[, or child] of the debtor; (2) that the debt is not a support obligation within the meaning of § 523(a)(5); and (3) that the debt was incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree, or other order of a court of record.

*In re Adam*, Case No. ADV 12-01295-DS, 2015 WL 1530086, at \*6 (B.A.P. 9th Cir. Apr. 6, 2015), *aff'd*, 677 F. App'x 353 (9th Cir. 2017).

[T]he trend in recent case law is to construe § 523(a)(15) expansively to cover a broader array of claims related to domestic relations within the discharge exception. *See, e.g., In re Wise*, 2012 WL 5399075, at \*6 (Bankr. E.D. Tex. Nov.5, 2012) (§ 523(a)(15) "rendered as non-dischargeable virtually all obligations arising between spouses as a result of a divorce decree."); *Quarterman v. Quarterman (In re Quarterman)*, 2012 Bankr. LEXIS 4924, at \*9–10 (Bankr. D. Ariz. October 17, 2012) ("The Section is not limited to simply divorce decree judgments alone but excepts any debt incurred by the debtor in the course of divorce or any debt in connection with a divorce

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT... Amie Suzanne Greenberg  
decree.").

Chapter 7

*Id.* at \*5–6.

#### IV. DISCUSSION

Here, Plaintiff has opposed the Motion. After a review of the pleadings, the Court finds that there remain genuine issues of material fact as to (i) whether the September 2012 Order and the December 2012 Order were issued in connection to the parties' dissolution proceedings; (ii) whether Plaintiff is entitled to claim \$4,438.28 for the children's medical, therapy, and educational expenses; and (iii) whether Plaintiff is entitled to post-judgment interest. However, the parties do not dispute that Defendant has already paid \$6,900 to Plaintiff in partial satisfaction of her debt.

##### A. *Untimely Opposition*

In her Reply, Defendant asks the Court not to consider the Opposition because it was untimely served. Defendant alleges that she did not receive the Reply until May 2, 2018, the day the Reply was due. Aside from this allegation, Defendant has not alleged that she suffered any prejudice as a result of her delayed receipt of the Opposition. In fact, since the Court continued the hearing from May 16, 2018 to June 13, 2018, Defendant was afforded additional time to file a supplemental reply if she wished. Because it does not appear that Defendant was prejudiced, the Court will consider the Opposition in ruling on the Motion.

##### B. *Request for Judicial Notice*

As an initial matter, pursuant to Federal Rule of Evidence 201(b)(2), the Court will grant Defendant's unopposed request for judicial notice of documents attached to her RJN. The judicially noticeable documents are copies of court records. *See, e.g., Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014) ("It is well established that we may take judicial notice of judicial proceedings in other courts."); *Golden Gate v. Marincovich*, 286 F. 105, 106 (9th Cir. 1923) ("Every court takes judicial notice of its own records in the same case.").

##### C. *11 U.S.C. § 523(a)(15)*

Defendant has not met her burden of proving that she is entitled to summary judgment

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Amie Suzanne Greenberg**  
on Plaintiff's claim under 11 U.S.C. § 523(a)(15).

**Chapter 7**

**1.      *Debt Owed to Defendant***

Defendant concedes that Plaintiff has established the first element of a claim under § 523(a)(15). All the amounts at issue are owed by Defendant, a former spouse of Plaintiff, to Plaintiff.

**2.      *Support Obligation Pursuant to § 523(a)(5).***

To prevail on a claim for relief under § 523(a)(15), Plaintiff must show that the amounts at issue are not support obligations pursuant to § 523(a)(5). Section 523(a)(5) excepts from discharge any debt for a "domestic support obligation." Pursuant to § 101(14A):

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of-

(i) a separation agreement, divorce decree, or property

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Amie Suzanne Greenberg**

**Chapter 7**

settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

Defendant argues that she is entitled to summary judgment because Plaintiff cannot establish this element of his claim. In RFA no. 40, Defendant asked, "Admit that the debt is not a domestic support obligation as defined in 11 U.S.C. § 101(14A)." (Defendant's Decl., Exh. G, at p. 232.) Plaintiff's response was, "Deny." (Defendant's Decl., Exh. G, at p. 307.) Defendant interprets this response as, "Plaintiff admits the sanction is a domestic support obligation as defined in 11 U.S.C. § 101(14A)." (Memorandum, at p. 8.) Because of this admission, Defendant argues, it has been conclusively established that the debt is a domestic support obligation excepted from discharge under § 523(a)(5). Therefore, Defendant contends that the debt cannot be excepted from discharge under § 523(a)(15).

However, there are several problems with Defendant's reasoning. First, RFA no. 40 is somewhat confusing, in that it asks Plaintiff to admit to a negative. At the time Plaintiff served his responses, he was *in pro per* and may not have clearly understood the RFA.

Second, Plaintiff's denial of RFA no. 40 is *not* equivalent to an affirmative admission that the sanctions are a domestic support obligation pursuant to § 101(41A).

[A party] cannot create an end-run around the jurisdictional requirements by forcing a denial of a negative and then claim the positive is admitted and conclusively determined. It is true that in formal logic, and even in everyday language, that what is may be inferred from a statement about what is not. Or, that denial is the opposite of affirmation. . . . In the context of a request for admission to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT...

**Amie Suzanne Greenberg**

**Chapter 7**

a plaintiff from a defendant, however, the effect of a denial is not the same. On the one hand, when a party admits to a fact in response to a request for admission, that fact is conclusively established for purposes of the litigation. Fed.R.Civ.P. 36(b) ("A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."); *see U.S. v. 2204 Barbara Lane*, 960 F.2d 126, 129 (11th Cir.1992). ***On the other, the effect of a denial is not to admit the opposite of the proposition offered for admission, but rather is simply to establish that the matter is in dispute.***

*Harmon v. Wal-Mart Stores, Inc.*, Case No. 3:08-CV-309-MEF, 2009 WL 707403, at \*4 (M.D. Ala. Mar. 16, 2009) (emphasis added).

Third, Plaintiff's response to RFA no. 40 contradicts his responses to other RFAs. In RFA no. 16, Defendant asked: "Admit that the debt in the amount of \$5,000 awarded in the September 4, 2012 order is not a debt for alimony, maintenance or support." (Defendant's Decl., Exh. G, at p. 228.) Plaintiff responded, "Admit." (Defendant's Decl., Exh. G, at p. 306.) In RFA no. 17, Defendant asked: Admit that the debt in the amount of \$38,411.66 awarded in the September 4, 2012 Order and in the December 12, 2012 Order is not a debt for alimony, maintenance or support." (Defendant's Decl., Exh. G, at p. 228.) Plaintiff responded, "Admit." (Defendant's Decl., Exh. G, at p. 306.)

Pursuant to Rule 36(b), "a matter admitted under this rule is conclusively established" unless otherwise ordered by the court. Thus, Plaintiff's responses to RFAs nos. 16 and 17 conclusively establish that the debts at issue are **not** debts for alimony, maintenance, or support as defined in § 101(41A), and therefore not excepted from discharge under § 523(a)(5). As noted above, Plaintiff's denial of RFA no. 40 lacks the same conclusive effect as an affirmative admission. Accordingly, the debts at issue could potentially still be excepted from discharge under § 523(a)(15).

**3. Debts Incurred in Connection with Dissolution Proceedings**

Defendant has not established that she is entitled to judgment as a matter of law as to the final element of the § 523(a)(15) discharge exception. The language of § 523(a)(15) is broad, excepting from discharge debts "incurred in the course of a divorce or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT... Amie Suzanne Greenberg

Chapter 7

separation *or in connection with* a separation agreement, divorce decree, *or* other order of a court of record."

California Family Code § 3027.1(a) provides:

If a court determines, based on the investigation described in Section 3027 or other evidence presented to it, that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation.

The September 2012 Order and the December 2012 Order (together, the "Sanctions Orders") relied on Family Code § 3027.1 in determining that sanctions against Plaintiff were warranted. Defendant tries to portray the Sanctions Orders as imposing post-dissolution sanctions designed primarily to deter her future conduct, with no connection to the parties' dissolution proceedings. However, the Defendant's OSC Request was filed specifically to modify previous child custody and visitation orders. The Family Court issued the Sanctions Orders in response to Defendant's OSC Request, which was based on false allegations of child abuse. These facts appear to show that the sanctions were debts to Plaintiff incurred "in connection with" the Divorce Decree.

Defendant argues that "[a] debt constitutes a debt incurred in connection with a divorce decree or separation agreement when it has been specifically incorporated into such divorce decree or separation agreement." *McFadden v. Putnam (In re Putnam)*, Case No. 10-19719-A-7, 2012 WL 8134423, at \*19 (Bankr. E.D. Cal. Aug. 30, 2012). Defendant interprets *Putnam*'s holding as requiring that *all* debts incurred in connection with a divorce decree **must be specifically incorporated into** the divorce decree to be nondischargeable under § 523(a)(15). However, this is not what *Putnam* holds. Instead, *Putnam* holds that **when** a debt is incorporated into a divorce decree, then it is necessarily incurred in connection with the divorce decree. *Putnam* does not hold that **only when** a debt is incorporated into a divorce decree is a debt incurred in connection with the divorce decree."



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT... **Amie Suzanne Greenberg**

**Chapter 7**

Defendant's interpretation of *Putnam* is too restrictive and is contrary to the weight of authority in favor of an expansive interpretation of § 523(a)(15). Courts have held that attorneys' fees and sanctions awards issued in connection with a dissolution proceeding are nondischargeable under § 523(a)(15). In *Tritt v. Tritt (In re Tritt)*, Case No. 12-42446, 2014 WL 1347763 (Bankr. E.D. Tex. Apr. 4, 2014), the plaintiff and defendant obtained a divorce decree that contained provisions regarding custody of their two children. During the course of subsequent litigation involving child custody disputes, the defendant filed an "emergency motion to protect children and request for temporary restraining order." The family court denied defendant's motion and imposed sanctions on her, finding that the motion had been filed in bad faith. In a subsequent proceeding, the family court found the defendant in contempt of prior court orders, and imposed further penalties upon her, including reimbursement of certain health care expenses of the children and confinement in the county jail. The family court further awarded attorneys' fees to plaintiff in connection with the custody litigation.

The defendant never paid plaintiff any of the amounts awarded. Subsequently, the defendant filed a chapter 7 petition. The plaintiff filed an adversary proceeding against the defendant, seeking a determination that the debts owed by defendant were nondischargeable pursuant to § 523(a)(5) and/or § 523(a)(15). The plaintiff filed a motion for partial summary judgment on his claims for relief. The defendant filed a cross-motion for summary judgment, asserting that the post-divorce sanctions and fee awards were discharged in her chapter 7 case. The court granted the plaintiff's motion and denied the defendant's motion, holding that the attorneys' fees, sanctions, and contempt awards were subject to the § 523(a)(15) exception:

Sanctions awarded against a debtor for engaging in bad faith litigation tactics, such as in the Sanctions Order in this case, are not excluded from the scope of § 523(a)(15). . . . The same analysis applies to fee awards arising from contempt proceedings . . . particularly when, as in this instance, the fee award compensates the former spouse for the necessity of bringing action to compel compliance with the Family Court's standing order regarding the propriety of parental behavior toward the children.

*Id.* at \*8.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 13, 2018

Hearing Room 301

2:30 PM

CONT... **Amie Suzanne Greenberg**

**Chapter 7**

Here, the facts are similar to those in *Tritt*. Like the defendant in *Tritt*, Defendant sought to modify the child custody provisions of the Divorce Decree. When the Family Court found Defendant's allegations of child abuse to be false, it imposed sanctions on Defendant pursuant to Family Code § 3027.1, in part to compensate Plaintiff for having to defend against Defendant's unfounded allegations.

Defendant next argues that a debt excepted from discharge under § 523(a)(15) must be incurred in the course of a divorce, and not after a divorce decree has been entered. Defendant relies on *Tracy v. Tracy (In re Tracy)*, Case No. 06-40044-JDP, 2007 WL 420252 (Bankr. D. Idaho Feb. 2, 2007). However, *Tracy* does not support Defendant's position. In *Tracy*, the plaintiff and the defendant obtained a divorce decree in October 2003. After the divorce, the defendant rented their home from the plaintiff until March 2005. When the defendant vacated the residence, she took several items from the home and withdrew \$3,179 from a joint account that had not been dealt with in the divorce proceedings. The plaintiff sued the defendant and obtained a money judgment against her. In the defendant's bankruptcy proceeding, the plaintiff and his current wife sought to except the money judgment from discharge under § 523(a)(15). The bankruptcy court held that the money judgment did not fall within the § 523(a)(15) exception:

[T]he parties' property dispute arose approximately a year and a half after the divorce decree was entered. Although the residence was awarded to Plaintiff in the divorce as his separate property, he thereafter rented it to Defendant. ***This created a new, landlord/tenant relationship between the parties.*** The subsequent lawsuit involved claims for damages Defendant allegedly caused to the residence as a tenant; claims that Defendant converted Plaintiff's personal property when she vacated the residence; and claims that she wrongfully withdrew funds from a joint bank account that the parties stipulated was not mentioned in the divorce decree. . . ***None of these claims gave rise to debts owed by Defendant to Plaintiff arising from their prior status as spouses.***

*Tracy*, 2007 WL 420252, at \*3 (emphasis added).

*Tracy* does not hold, as Defendant suggest, that all debts incurred post-dissolution are outside the § 523(a)(15) exception. In *Tracy*, the new landlord/tenant relationship

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

between the plaintiff and the defendant was the basis for the post-divorce money judgment. The court found that such damages were unrelated to the divorce proceedings and did not arise from the parties' prior status as spouses. Here, even though the Sanctions Orders were entered several months after the Divorce Decree, the Sanctions Orders stem directly from Defendant's and Plaintiff's status as former spouses and their dispute over child custody.

In light of the foregoing, Defendant is not entitled to judgment as a matter of law on Plaintiff's claim for relief under § 523(a)(15).

***D. The Children's Medical, Therapy, and Educational Expenses***

In the Complaint, Plaintiff alleges that the September 2012 Order directed Defendant to pay "\$4,438.28 for the children's medical, therapy and educational expenses[.]" (Complaint, ¶ 10.) The Divorce Decree provided that the each party was to "pay one-half the cost of future therapy with Dr. Gold for the minor children." (RJN, Exh. B, ¶ 12.) The September 2012 Order provided that Defendant was to reimburse Plaintiff for "one-half the costs of the minor children's therapy with Dr. Gold[.]" pursuant to the Divorce Decree. (RJN, Exh. A, at p. 37.)

Plaintiff does not dispute the language in the September 2012 Order, regarding Defendant's reimbursement of one-half the cost of the children's therapy with Dr. Gold. Plaintiff asserts that there are disputed facts as to his claim for \$4,438.28 for the children's medical, therapy, and education expenses. Notwithstanding his assertion, his claimed \$4,438.28 does not appear in the Divorce Decree, the September 2012 Order, or the December 2012 Order.

In his responses to Defendant's RFAs, Plaintiff states that "it was implied that the cost of therapy be equally shared regardless of the therapist." (Defendant's Decl., Exh. G, at p. 309.) At the November 14, 2012 hearing, the Family Court stated that "other therapists and other health care providers fall within child support and add ons to child support if not covered by that specific language in the judgment." (Defendant's Decl., Exh. F, at p. 213.) The Family Court's statement refers to other health care and therapy providers, but does not refer to educational expenses. Without further evidence, it is not clear whether this \$4,438.28 debt alleged by Plaintiff was contemplated by the Divorce Decree, the September 2012 Order, or the December

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Amie Suzanne Greenberg**  
2012 Order.

**Chapter 7**

Because there appear to be material facts in dispute as to the amount of, and Defendant's responsibility for, the children's medical, therapy, and educational expenses, the Court cannot grant summary judgment in favor of Defendant on this issue at this time.

***E. Interest Owed to Plaintiff***

Defendant argues that Plaintiff has not produced any evidence that he is entitled to interest. In his Complaint, Plaintiff alleges that the September 2012 Order provides for the payment of sanctions in the total amount of \$43,411.66 plus interest. The September 2012 Order provides for sanctions in the amount of \$38,411.66 pursuant to Family Code § 3027.1 and \$5,000 pursuant to Family Code § 271. (RJN, Exh. A, at p. 37.) However, the September 2012 Order does not provide for interest. In addition, the December 2012 Order specifically provides that the sanctions under Family Code § 3027.1 in the amount of \$38,411.66 were awarded *without* interest. (RJN, Exh. C, at p. 75.) The December 2012 Order does not mention the \$5,000 in sanctions awarded pursuant to Family Code § 271.

Notwithstanding the foregoing, Plaintiff argues that he is entitled to interest on the sanctions awards under California law, because the sanctions were not paid in full within 30 days. California Code of Civil Procedure 685.010(a) provides that "[i]nterest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied." Defendant does not dispute that the sanctions awards remain unsatisfied. Nor has Defendant met her burden of showing that Plaintiff is not entitled to any interest whatsoever. Accordingly, Defendant is not entitled to summary judgment on this issue.

***F. Partial Satisfaction***

Defendant has provided evidence that she has paid Plaintiff the sum of \$6,900 in partial satisfaction of the sanctions awards. Plaintiff does not dispute this fact. Accordingly, the Court will enter summary adjudication on this issue.

**V. CONCLUSION**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

In light of the foregoing, the Court will grant partial summary adjudication as to the issue of partial satisfaction in the amount of \$6,900. The Court will deny summary adjudication as to all other issues.

Defendant must submit the order within seven (7) days.

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#18.00** Plaintiff's motion for an order extending the deadline to file pretrial motions set forth in Court's October 30, 2017 scheduling order

fr. 5/16/18

Docket 38

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On March 31, 2017, Amie Suzanne Greenberg ("Defendant") filed a voluntary chapter 7 petition.

On June 26, 2017, Jeff Rubin ("Plaintiff") filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(15). Through the Complaint, Plaintiff requests nondischargeability of \$43,411.66, plus interest, awarded to Plaintiff by the family court in the parties' dissolution proceeding (the "Family Court Order"). Complaint, Exhibit 1. Plaintiff also requests \$4,438.28 "for the children's medical, therapy and educational expenses." *Id.*

On August 23, 2017, the Court held an initial status conference. The joint status report [doc. 6] the parties prepared in preparation for the initial status conference indicated that the parties had not complied with Federal Rule of Bankruptcy Procedure ("FRBP") 7026. As such, on August 24, 2017, the Court entered an order [doc. 8] continuing the status conference and instructing the parties to comply with FRBP 7026 by, among other things, providing initial disclosures to one another.

On October 25, 2017, the Court held a continued status conference. On October 30, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 14]. Through the Scheduling Order, the Court set the following dates and deadlines: (A)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

January 31, 2018 as the discovery cutoff date; (B) February 15, 2018 as the last day to file pretrial motions; (C) March 21, 2018 as the deadline by which the parties must file a pretrial stipulation; and (D) April 4, 2018 as the pretrial conference.

On April 12, 2018, Plaintiff filed a substitution of counsel, indicating that Plaintiff retained counsel to represent him in this action [doc. 37]. On April 20, 2018, Plaintiff filed a motion to extend the pretrial motion deadline found in the Scheduling Order (the "Motion") [doc. 38]. On May 1, 2018, Defendant filed an opposition to the Motion [doc. 45] and requested sanctions pursuant to 11 U.S.C. § 105(a), Federal Rule of Civil Procedure 37(c) and Federal Rule of Bankruptcy Procedure 9011.

## **II. ANALYSIS**

### ***A. Modification of Scheduling Order***

Pursuant to Federal Rule of Civil Procedure ("Rule") 16(b)(4), as incorporated into this proceeding by Fed. R. Bankr. P. 7016, "[a] schedule may be modified only for good cause and with the judge's consent." "The district court is given broad discretion in supervising the pretrial phase of litigation...." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

Rather than use the "good cause" standard of Rule 16(b)(4), the parties argue whether there was excusable neglect, an issue the Court need not decide in connection with a request to modify one of the Court's own orders. Instead, the Court need only find "good cause" to extend the deadline by which the parties may file pretrial motions.

Here, there is good cause to extend the deadline. Allowing Plaintiff the opportunity to file a motion for summary judgment will expedite this matter, especially in light of the fact that the issues present here are mostly legal, not factual. As a result, all of the issues may be disposed through a motion for summary judgment, which will save time and resources for both parties. In addition, the Court has not set trial dates, such that the Court will not have to alter any dates or deadlines related to trial. Moreover, Plaintiff has now retained counsel, and the Court expects counsel to meet deadlines diligently going forward. The Court will closely scrutinize any future missed deadlines.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

In addition, Defendant concedes that she has now received Plaintiff's initial disclosures. To the extent Plaintiff's disclosures provide an additional basis for Defendant to file another motion for summary judgment, the deadline will now be also extended for Defendant to have the opportunity to do so. It is in the best interest of both parties to attempt resolution through a motion for summary judgment, or at least a motion for partial summary adjudication, for the purpose of saving the time and money that would otherwise be spent preparing for trial. As such, the Court will grant the Motion.

***B. Sanctions***

The Court also will deny Defendant's request for sanctions under 11 U.S.C. § 105(a), Rule 37(c) and Federal Rule of Bankruptcy Procedure ("FRBP") 9011. Defendant's arguments under Rule 37(c) are repetitive of her arguments in the separately filed motion in limine, and will be denied for the same reasons outlined in the ruling on that motion.

Pursuant to 11 U.S.C. § 105(a), the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title," and take "any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." "The standard for finding a party in civil contempt is well settled: 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." *In re Dyer*, 322 F.3d 1178, 1190-91 (9th Cir. 2003).

Here, Defendant has not pointed to a "specific and definite" order of the Court. The October 30, 2017 scheduling order did not include a deadline by which the parties had to exchange initial disclosures. That deadline is governed by Rule 26(a), and the appropriate remedy is to seek sanctions under Rule 37(c), which Defendant already did in a separate motion. Regarding Defendant's assertions about the pretrial stipulation, it appears that Plaintiff timely filed a unilateral pretrial statement. If Plaintiff did not timely serve Defendant with his portion of a joint pretrial stipulation, the more appropriate remedy at this time is to continue the pretrial conference for the parties to file a joint pretrial stipulation, especially now that Plaintiff has retained counsel.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

As for Defendant's requests for sanctions under FRBP 9011, any request for sanctions under FRBP 9011 must "be made separately from other motions or requests...." FRBP 9011(c)(1)(A). Even if Defendant had filed a separate motion, there is no basis for relief under FRBP 9011. In the Motion, Plaintiff mostly quotes the family court's orders in his statement of facts. The inclusion of these orders for the purpose of providing background is not sanctionable conduct under FRBP 9011. Moreover, Plaintiff did not call Defendant a vexatious litigant; Plaintiff stated that Defendant "did not change her vexatious ways." Although the language is strong, Plaintiff did not falsely represent to the Court that Defendant was deemed a vexatious litigant by any other court. There being no basis for sanctions under any of the authorities above, the Court will deny Defendant's request.

**III. CONCLUSION**

The Court will grant the Motion. The Court will extend the deadline for the parties to file pretrial motions to **September 14, 2018**.

Plaintiff must submit an order within seven (7) days.

Tentative ruling regarding Defendant's evidentiary objections to the identified paragraphs in the Declaration of Jeff Rubin set forth below:

paras. 4-5: sustain

Regarding Defendant's remaining objections, those objections do not involve "evidence," because Defendant is objecting to language in the Motion instead of to actual evidence, such as testimony in a declaration or exhibits attached thereto. Moreover, it is unclear to which language Defendant objects because Defendant did not quote the allegedly objectionable language. As such, the Court will overrule the remaining objections made by Defendant.

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Amie Suzanne Greenberg**

**Chapter 7**

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Represented By  
Sevan Gorginian

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 13, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#19.00** Pretrial conference re: complaint to determine dischargeability  
of debt pursuant to sections 523(a)(15)

fr. 8/23/17; 10/25/17; 4/4/18;5/13/18

Docket 1

**Tentative Ruling:**

The Court intends to continue this pretrial conference to **1:30 p.m. on November 7, 2018**. The parties should be prepared to discuss their availability. If the Court continues the pretrial conference to this date, the parties must file a joint pretrial stipulation no later than **October 24, 2018**.

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

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:14-13981 Encino Center LLC**

**Chapter 11**

**#1.00** Post confirmation status conference re chapter 11 case

fr. 11/6/14; 2/12/15; 6/11/15; 7/9/15(stip); 8/20/15; 10/22/15;  
1/7/16; 2/18/16; 3/24/16; 6/9/16; 7/28/16; 10/6/2016; 4/6/17;  
8/3/17; 8/10/17; 12/14/17

Docket 1

**\*\*\* VACATED \*\*\* REASON: Final decree and order closing case entered  
6/7/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Encino Center LLC

Represented By  
Sandford Frey  
Stuart I Koenig  
Marta C Wade

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:16-11351 Oscar Navarro**

**Chapter 11**

**#2.00** Post-confirmation status conference re chapter 11 case

fr. 6/16/16; 12/1/16; 2/16/17; 3/9/17; 4/6/17; 5/4/17;  
7/6/2017; 8/17/17; 12/21/17; 1/18/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Final decree and order closing case entered  
6/7/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oscar Navarro

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#3.00 Confirmation hearing chapter 11 plan of reorganization**

Docket 102

**Tentative Ruling:**

Confirm Chapter 11 Plan dated January 10, 2018 [doc. 102]. No later than **November 29, 2018**, the debtors must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. A postconfirmation status conference will be held on **December 13, 2018 at 1:00 p.m.**

The debtors must submit the confirmation order within seven (7) days.

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik  
Roksana D. Moradi-Brovia

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#4.00 Status conference re chapter 11 case**

fr. 6/8/17, 10/5/17; 10/19/17 (stip); 11/16/17(stip); 12/14/17;  
1/11/18; 4/12/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#5.00** Disclosure statement hearing in support of plan of reorganization

fr. 2/8/18; 3/29/18; 4/12/18

Docket 79

**\*\*\* VACATED \*\*\* REASON: Order entered 6/12/18 cont matter to 8/2/18  
@ 1:00pm.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#6.00 Disclosure statement hearing in support of plan of reorganization**

Docket 45

**Tentative Ruling:**

According to the debtors, the debtors will be filing a stipulation with creditor JP Morgan Chase Bank, N.A. ("Chase") setting forth the parties' stipulated treatment of Chase's claim. Because the current chapter 11 plan and disclosure statement do not include this information, approval of the disclosure statement at this time is premature.

In addition, the current disclosure statement contains a summary of the debtors' monthly operating reports that contains incorrect numbers. Moreover, the disclosure statement states that the debtors anticipate a projected monthly disposable income of \$1,000, based on a monthly income of \$8,896.85 and monthly expenses of \$5,537.48. These numbers actually yield a monthly disposable income of \$3,359.37. The debtors have not explained this discrepancy.

The debtors should file an amended chapter 11 plan and disclosure statement incorporating the stipulation with Chase and correcting the errors outlined herein.

The Court will continue the hearing on the adequacy of the debtors' disclosure statement to **1:00 p.m. on September 13, 2018**. No later than **August 7, 2018**, the debtors must file an amended chapter 11 plan and related disclosure statement, and must serve notice of the continued hearing on the adequacy of the amended disclosure statement.

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#7.00** Status conference re: chapter 11 case

fr. 10/19/17; 3/15/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10287 Gary Stephen Gelzer**

**Chapter 11**

**#8.00** Status conference re: chapter 11 case

fr. 4/12/18; 5/10/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 5/16/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gary Stephen Gelzer

Represented By  
Larry G Noe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:16-12950 Kimberly Birbrower**

**Chapter 7**

**#9.00 Debtor's motion to dismiss chapter 7 case**

Docket 120

**\*\*\* VACATED \*\*\* REASON: continued to 6/21/18 at 2:00pm per order  
entered on 5/30/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kimberly Birbrower

Represented By  
Tawni Takagi  
David A Tilem

**Trustee(s):**

David Seror (TR)

Represented By  
Jessica L Bagdanov

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#10.00** Motion of Golden Spectrum Property, LLC, landlord, regarding the Massage Envy Palmdale location (Hampton Heights, Inc.), for allowance and immediate payment of administrative claim for unpaid post-petition rent

Docket 288

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On April 28, 2017, Capri Coast Capital, Inc. filed a voluntary chapter 11 petition. On June 9, 2017, Hampton Heights, Inc. ("Hampton") filed a voluntary chapter 11 petition [1:17-bk-11545-VK]. On August 2, 2017, the Court entered an order granting the Debtor's motion for joint administration of its case with Ravello Ventures, Inc., Amalfi Assets, Inc., and Hampton (collectively, the "Debtors") [doc. 43].

On February 28, 2018, the Debtors filed a motion to approve the sale of substantially all of the Debtors' assets (the "Sale Motion") [doc. 221]. On April 5, 2018, the court entered an order granting the Sale Motion [doc. 257]. The Debtors received approximately \$216,750 in proceeds from the closing of the sale.

Golden Spectrum Property, LLC ("Golden") was the landlord for the Palmdale location operated by Hampton. Hampton was current on its rent payments up through March 2018. Hampton was in possession of its location until April 5, 2018. Golden alleges that Hampton did not pay rent for April 1-5, 2018, in the amount of \$1,953.33.

On May 24, 2018, Golden filed the pending *Motion of Golden Spectrum Property, LLC, Landlord, Regarding the Massage Envy Palmdale Location (Hampton Heights, Inc.) for Allowance and Immediate Payment of Administrative Claim for Unpaid Post-Petition Rent* (the "Motion") [doc. 288]. In the Motion, Golden argues that the unpaid rent in the amount of \$1,953.33 is an actual and necessary expense of preserving the Hampton estate. As such, the unpaid rent should be deemed allowed as a post-petition administrative expense and paid immediately.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

On May 31, 2018, the Debtors filed a limited opposition to the Motion [doc. 293]. The Debtors do not oppose Golden's request for a liquidated administrative claim in the amount of \$1,953.33 against the Hampton estate. However, the Debtors argue that such claim should be paid pro-rata with other administrative claimants when such payments are made, and the claim should be against Hampton only.

**II. DISCUSSION**

Pursuant to 11 U.S.C. § 503(b), "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate . . .". Pursuant to 11 U.S.C. § 365(d)(3),

The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

The parties do not dispute that Golden's claim for unpaid rent in the amount of \$1,953.33 should be deemed an allowed administrative expense against the Hampton estate. However, the parties disagree whether such claim should be paid immediately, or pro rata with other administrative claimants when such payments are made.

Some courts hold that the failure to pay postpetition rent entitles a lessor to immediate payment on its administrative claim, subject to disgorgement if there are insufficient funds to pay all administrative claimants in full. In *In re Four Star Pizza, Inc.*, 135 B.R. 498 (Bankr. W.D. Pa. 1992), a debtor leased premises for operation of its pizza parlor. The debtor filed a chapter 11 petition. Three months later, the court entered an order granting the debtor's motion to reject the lease for the premises. Between the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 14, 2018

Hearing Room 301

2:00 PM

CONT... **Capri Coast Capital, Inc.**

**Chapter 11**

petition date and the rejection of the lease, the debtor occupied the premises without paying rent. The debtor's subsequently filed chapter 11 plan provided for the payment in full of all administrative claims on the effective date of the plan. Before the disclosure statement was approved, the landlord filed a motion to compel the payment of rent as an administrative expense, pursuant to § 365(d)(3). The court granted the motion holding that "[a] nonresidential lessor's administrative expense claim which arises under § 365(d)(3) shall be paid immediately, absent a showing of substantial doubt that there will be sufficient funds available to pay all administrative claimants in full." *Id.* at 500. However, the court further held that the rent payments were:

entitled to payment on a pro rata basis with all other allowed chapter 11 administrative claims. The order directing immediate payment of movant's claim will be subject to debtor's right to seek recovery of all or part of the payment in the unlikely event that all other chapter 11 administrative claimants are not paid in full.

*Id.* (citing *In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 973 (Bankr. E.D. Pa. 1987)).

Other courts hold that courts have discretion whether to order immediate payment. In *In re Washington Bancorporation*, 126 B.R. 130 (Bankr. D.D.C. 1991), the court determined that a landlord was entitled to an administrative expense on account of a debtor's unpaid post-petition rent. The landlord sought immediate payment of the administrative expense. The court held that immediate payment was required, unless the debtor could establish good cause for withholding payment. The court found that the debtor-in-possession had over \$900,000 in cash on hand, and did not show good cause for a delay of payment. *Id.* at 131. Accordingly, the court granted the landlord's motion and ordered immediate payment of the unpaid rent at issue.

In light of the circumstances of this case, the Court will order the immediate payment of Golden's administrative expense claim. The Debtors appear to be holding approximately \$216,750 in cash from the sale proceeds. Golden's claim is in the amount of \$1,953.33. The Debtors have not shown "substantial doubt that there will be sufficient funds to pay all administrative claimants in full." Nor have the Debtors shown good cause for delaying the payment of this relatively small amount.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.  
III. CONCLUSION**

**Chapter 11**

In light of the foregoing, the Court will grant the Motion. Golden's administrative expense claim is entitled to payment on a pro rata basis with all other chapter 11 administrative claimants of the Hampton estate. The Debtors are ordered to pay the amount of \$1,953.33 to Golden within seven (7) days following entry of the order. The amount paid to Golden is subject to disgorgement if there are insufficient funds to pay all administrative claimants in full.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#11.00** Motion to compel true up and reimbursement to purchaser due to debtors failure to pay pre-closing wages and other damages

Docket 277

**Tentative Ruling:**

If Joyfully Gifted, Inc. ("Movant") is responsible for the payment of payroll incurred after April 5, 2018 (the lockout date), why is it appropriate for the debtors to retain revenue earned *after* April 5, 2018 (net of the royalties paid on April 11, 2018 to the franchisor)?

After the lockout on April 5, 2018, it is not credible that equipment and inventory was taken from the debtors' premises in the amounts "estimated" by Ms. Lawrence. Movant similarly has not demonstrated its entitlement to the other alleged damages.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#12.00** U.S. Trustee Motion to dismiss or convert Notice Of Motion And Motion Under 11 U.S.C. § 1112(b) To Dismiss Or Convert Case; Declaration Of Alfred Cooper III . (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)(Clementson, Russell)

fr. 6/7/18

Docket 271

**\*\*\* VACATED \*\*\* REASON: Order ent 5/23/18 approving stip to cont to 7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#13.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order ent 5/23/18 approving stip to cont to  
7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#14.00** Disclosure statement describing chapter 11 plan  
fr. 5/3/18; 6/7/18

Docket 214

**\*\*\* VACATED \*\*\* REASON: Order ent 5/23/18 approving stip to cont to  
7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#15.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: hearing continued to 7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#16.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/17; 5/17/18; 6/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: hearing continued to 7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#17.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17;  
2/8/18; 6/7/18; 6/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: hearing continued to 7/19/18 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 14, 2018

Hearing Room 301

2:00 PM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#18.00 Motion to Avoid Lien (Real Property)  
with ASD Specialty Healthcare, Inc. dba Oncology Supply

fr. 4/12/18(stip); 5/17/18; 6/7/18(stip)

Docket 99

**Tentative Ruling:**

Grant, subject to the conditions stated in the oppositions [docs. 107, 128] filed by ASD Specialty Healthcare, Inc. d/b/a Oncology Supply ("ASD").

On June 8, 2017, Shamel Sanani, M.D. and Farideh Sanani (the "Debtors") filed a chapter 11 petition. In their schedules, the Debtors listed an interest in the real property located at 3935 Prado del Maiz, Calabasas, California 91302 (the "Property"), with a value of \$2,400,000. (Doc. 37, at p. 3.) The Debtors also claimed an exemption the Property in the amount of "100% of fair market value, up to any applicable statutory limit." (*Id.*, at p. 14.)

On January 23, 2018, the Debtors filed the pending Motion to Avoid Lien Under 11 U.S.C. § 522(f) (the "Motion") [doc. 99]. In the Motion, the Debtors claimed a homestead exemption in the Property in the amount of \$175,000. (Motion, at p. 2.) Through the Motion, the Debtors sought to avoid a judgment lien against the Property in favor of ASD, in the approximate amount of \$1,746,277.96. In support, the Debtors attached an authenticated appraisal of the Property, valuing the Property at \$2,300,000 as of June 8, 2017 (the "Petition Date").

On February 13, 2018, ASD filed an opposition [doc. 107]. ASD requested the opportunity to obtain its own appraisal. In addition, ASD argued that any avoidance of its lien should be subject to allowance by the Court of the secured claims with "alleged" priority over ASD's lien in amounts not less than as set forth in the Motion. Alternatively, ASD asked the Court to preserve ASD's right to further contest avoidance of its lien to the extent the debtors later seek to reduce or otherwise modify the "alleged" secured claims superior to ASD's lien on the residence. ASD has not disputed the priority of the senior liens identified by the Debtors, or the amount of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Shamel Sanani and Farideh Sanani**

**Chapter 7**

related secured debts.

The hearing on the Motion was continued per stipulation to allow ASD to obtain its appraisal of the Property. On May 31, 2018, ASD filed a supplemental opposition to the Motion [doc. 128]. In support of their supplemental opposition, ASD attached an authenticated appraisal valuing the Debtors' residence at \$2,450,000, as of April 6, 2018.

Pursuant to 11 U.S.C. § 522(a)(2), "value" for purposes of a motion to avoid a judicial lien under § 522(f), "means fair market value as of the date of the filing of the petition." Here, the Petition Date is June 8, 2017. Accordingly, pursuant to § 522(a)(2), the value of the Property should be determined as of June 8, 2017. The Debtors' appraisal values the Property at \$2,300,000 as of June 8, 2017. ASD's appraisal values the Property at \$2,450,000 as of April 6, 2018. ASD has not submitted any evidence as to the value of the Property as of the Petition Date. Pursuant to § 522(a)(2), and for purposes of the pending Motion, the Court finds that the value of the Property is \$2,300,000 as of the Petition Date.

In light of the foregoing, the Court will grant the Motion subject to ASD's conditions, which the Debtors do not oppose. ASD's judgment lien is avoided in the amount of \$1,139,860.37. \$606,417.59 of ASD's judgment lien is not avoided. Such lien avoidance is subject to allowance by the Court of the secured claims with priority over ASD's lien in amounts not less than as set forth in the Motion. ASD will retain the right to further contest avoidance of its lien, to the extent the Debtors later seek to reduce or otherwise modify the secured claims senior to ASD's lien.

The Debtors must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Shamel Sanani

Represented By  
Daniel I Barness

**Joint Debtor(s):**

Farideh Sanani

Represented By  
Daniel I Barness

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 14, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Shamel Sanani and Farideh Sanani**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein  
Reagan E Boyce  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10860 David James Rush**

**Chapter 7**

**#8.00** Reaffirmation agreement between Debtor and Altura Credit Union

Docket 13

**Party Information**

**Debtor(s):**

David James Rush

Represented By  
Barry E Borowitz

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10295 Maria Liza Marcelino Medrano**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and Bank of America, N.A.

Docket 10

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

**Debtor(s):**

Maria Liza Marcelino Medrano

Represented By  
Raymond J Bulaon

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10392 Luis Alberto De La Torre**

**Chapter 7**

**#2.00** Reaffirmation agreement between Debtor and  
Santander Consumer USA Inc., dba Chrysler Capital

Docket 9

**Party Information**

**Debtor(s):**

Luis Alberto De La Torre

Represented By  
Daniel King

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10643 Arnol Alexis Melgar**

**Chapter 7**

**#3.00 Reaffirmation agreement between debtor and Logix Federal Credit Union**

Docket 8

**Party Information**

**Debtor(s):**

Arnol Alexis Melgar

Represented By  
Elena Steers

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10673 Michelle Capozzoli and Christin Molano**

**Chapter 7**

**#4.00 Reaffirmation agreement between Debtor and Logix Federal Credit Union**

Docket 17

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

**Debtor(s):**

Michelle Capozzoli

Represented By  
Theodore K Roberts

**Joint Debtor(s):**

Christin Molano

Represented By  
Theodore K Roberts

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Theodore K Roberts



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10676 Natasha Fett**

**Chapter 7**

**#5.00** Reaffirmation agreement between Debtor and Ally Financial

Docket 10

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

**Debtor(s):**

Natasha Fett

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10816 Kerem Ismail Hanci and Jennifer McKuen Smith-Hanci**

**Chapter 7**

**#6.00** Reaffirmation agreement between Debtor and SAG-AFTRA Federal Credit Union

Docket 10

**Party Information**

**Debtor(s):**

Kerem Ismail Hanci

Represented By  
Barry E Borowitz

**Joint Debtor(s):**

Jennifer McKuen Smith-Hanci

Represented By  
Barry E Borowitz

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 19, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10824 Alberto Carrera Carvantes**

**Chapter 7**

**#7.00** Reaffirmation agreement between Debtor and Hyundai Capital America  
dba Kia Motors Finance

Docket 11

**Party Information**

**Debtor(s):**

Alberto Carrera Carvantes

Represented By  
Carlos A Delgado Ibarcena

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#1.00 Motion for relief from stay [AN]**

IDFIX, Inc.  
VS  
DEBTOR

fr. 4/18/18

Docket 137

**Tentative Ruling:**

Deny relief from the automatic stay.

In order to provide additional time for the chapter 7 trustee (the "Trustee") to determine whether he would proceed with the state court litigation, and for the parties to explore mediation of their dispute, the Court continued the prior hearing on this matter. The parties were instructed to file a status report no later than June 6, 2018.

On June 6, 2018, movant filed a unilateral status report [doc. 142]. Movant states that on April 26, 2018, the state court sustained movant's demurrer and gave the Trustee 10 days to file an amended complaint. As of the date of the status report, movant states that the Trustee has not done so. Movant further states that the state court set a trial date for the debtor's affirmative claims for February 19, 2019.

The unilateral status report is not supported by declaration or other evidence. If the statements in the unilateral status report are correct, it appears that the Trustee does not intend to pursue the debtor's claims against Movant in state court.

Even if mandatory abstention applies to the parties' state court litigation, mandatory abstention alone does not necessarily establish "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). In *Benedor Corp. v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.)*, 96 F.3d 346 (9th Cir. 1996), a chapter 11 debtor removed a creditor's state court breach of contract action against the debtor to bankruptcy court. The creditor moved for abstention, remand, and relief from the automatic stay, which the bankruptcy court denied. The district court reversed the bankruptcy court, holding

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

that because mandatory abstention applied, there was cause for relief from the automatic stay. With respect to cause for relief from the automatic stay, the Ninth Circuit Court of Appeals reversed the decision of the district court:

"[A] finding that mandatory abstention applies to the underlying state action does not preclude denial of relief from § 362's automatic stay. . . . [Section] 362(b) provides explicit exceptions to § 362(a)'s automatic stay. Pending state actions that are determined to be non-core proceedings are not listed among the explicit exemptions. Therefore, it is clear that Congress did not intend to provide an exception to the automatic stay for non-core pending state actions which are subject to mandatory abstention. In fact, Congress has made it clear that it intended just the opposite by providing that a decision to abstain under § 1334(c)(2) "shall not be construed to limit the applicability of the stay provided for by [§ 362] . . . ." 28 U.S.C. § 1334(c)(2)[.]

*Id.* at 352. The Ninth Circuit Court of Appeals found that the bankruptcy court had reasonably considered the following grounds in denying relief from stay: whether the creditor would file a proof of claim in the debtor's case, or waive its right to payment from the bankruptcy estate, and that judicial economy would be promoted by limiting duplicative litigation. As the Court of Appeals noted:

[t]he filing of a proof of claim by [creditor] must also be considered in determining whether cause exists for lifting the automatic stay. In holding that the automatic stay must be lifted, the district court ignored the filing of the proof of claim, instead focusing on its finding that the state court action was not within the bankruptcy court's core jurisdiction. We hold that the district court erred in doing so.

The allowance and disallowance of claims against the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Once [creditor] filed its proof of claim, it subjected its claim to the core jurisdiction of the bankruptcy court. It was within the sound discretion of the bankruptcy court to deny relief from the automatic stay.

*Id.* at 353.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

Here, on October 6, 2017, movant filed proof of claim 6-1 in the debtor's bankruptcy case. The filing of this proof of claim subjects movant's claim to the core jurisdiction of this Court, subject to payment under the Bankruptcy Code's distribution scheme along with other filed claims. Pursuant to *Conejo Enterprises*, this Court is within its sound discretion to deny movant's request for relief from the automatic stay, for the reason set forth in the Court's prior tentative ruling.

The Trustee must submit the order within seven (7) days.

**Tentative ruling from 4/18/18**

Deny.

**I. BACKGROUND**

Kandy Kiss of California, Inc. (the "Debtor") is a California corporation that was in the business of design, product development, wholesale manufacture, and sale of apparel to large retailers. IDFIX, Inc. ("Movant") produced fabric and garments for the Debtor.

In 2015, the Debtor and Movant had a dispute over certain garments that Movant produced for the Debtor. The Debtor refused to pay for the alleged nonconforming garments, which cost a total of \$2,462,097.88 [doc. 137, Exh. A]. On July 14, 2016, the Debtor filed in state court a complaint against Movant and three other defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "State Court Action") [doc. 137, Exh A]. On December 1, 2016, Movant filed a cross-complaint against the Debtor and three other cross-defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "Cross-Complaint") [doc. 137, Exh A].

On February 14, 2017, an involuntary petition was filed against the Debtor. The State Court Action was stayed pursuant to the automatic stay. On September 19, 2017, the order for relief was entered in the Debtor's case [doc. 63].

On March 15, 2018, Movant filed a motion for relief from the automatic stay to proceed with the Cross-Complaint against the Debtor in the State Court Action (the "Motion") [doc. 137]. In the Motion, Movant argues that the Court must abstain from

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

hearing the State Court Action because mandatory abstention under 28 U.S.C. § 1334(c) constitutes cause for lifting the automatic stay. Movant also argues that relief from the automatic stay is proper using the multi-factor test from *In re Sonmax Indus., Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990).

On April 4, 2018, the chapter 7 trustee ("Trustee") filed an opposition to the Motion (the "Opposition") [doc. 139]. On April 11, 2018, Movant filed a reply to the Opposition [doc. 140].

**II. DISCUSSION**

**A. Mandatory Abstention**

28 U.S.C § 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Mandatory abstention under 28 U.S.C. § 1334(c)(2) requires that the following seven elements be met:

- (1) A timely motion;
- (2) a purely state law question;
- (3) a non-core proceeding § 157(c)(1);
- (4) a lack of independent federal jurisdiction absent the petition under Title 11;
- (5) that an action is commenced in a state court;
- (6) the state court action may be timely adjudicated;
- (7) a state forum of appropriate jurisdiction exists.

*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. B.A.P. 2001).

For the Court to be required to abstain, all seven elements of mandatory abstention must be present. Here the Motion was timely filed and there is no independent basis for federal jurisdiction outside of Title 11 of the United States Code as the Cross-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

Complaint alleges purely state law questions. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise raise any bankruptcy issues or impede the Trustee's administration of the case. Moreover, the State Court Action was commenced in state court and the state court has jurisdiction over the State Court Action.

However, it is unclear whether the state court can timely adjudicate the State Court Action. *Compare In re Eastport Associates*, 935 F.2d 1071, 1078-79 (9th Cir. 1991) (holding that the state court could not timely adjudicate the matter where parties would have to start litigation over in state court); *and In re Smith*, 389 B.R. 902, 921 n. 18 (Bankr. D. Nev. 2008) (noting that "there can be no timely adjudication" where the bankruptcy court can hear the matter before the state court); *with Bowen Corp. v. Sec. Pac. Bank Idaho, F.S.B.*, 150 B.R. 777, 784 (Bankr. D. Idaho 1993) (finding the state court could adjudicate the matter much more quickly because a motion for summary judgment had already been filed and was pending before the action was removed to federal court). "[T]he party moving for abstention will bear the burden of demonstrating that a state court action can be timely adjudicated." *In re First All. Mortgage Co.*, 269 B.R. 449, 455 (C.D. Cal. 2001). There is no trial set in the State Court Action and few resources have been expended in preparation for a trial in the State Court Action [doc. 140]. The parties would need to prosecute the State Court Action from start to finish because it was stayed in the early stages of litigation. Movant has not provided any evidence that the State Court Action can be timely adjudicated. On the other hand, if necessary, this Court could estimate Movant's claim sooner than the state court would be able to fully adjudicate the State Court Action and liquidate Movant's claim. Accordingly, it does not appear that all elements for mandatory abstention have been met.

***B. Relief from the Automatic Stay***

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

litigation to proceed in a non-bankruptcy forum 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 as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also Sonnax*, 907 F.2d at 1286 (listing factors). When applied to the pending Motion and case, the *Sonnax* factors do not appear to support relief from the automatic stay.

***Whether the relief will result in a partial or complete resolution of the issues***

This factor weighs against lifting the automatic stay. Allowing the State Court Action to proceed in state court would not allow immediate and complete resolution of the dispute between Movant and the Debtor. The state court can adjudicate the claims and cross-claims between the parties; however, Movant would still need to file a proof of claim in the Debtor's bankruptcy case in order to receive a distribution from the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**  
Trustee.

Chapter 7

***The lack of any connection with or interference with the bankruptcy case***

This factor weighs against lifting the automatic stay. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise deal with any bankruptcy issues. However, if the Trustee were required to litigate the State Court Action in a different forum, such litigation may impede the Trustee's administration of the case.

***Whether the foreign proceeding involves the debtor as a fiduciary***

The State Court Action does not involve the Debtor's conduct as a fiduciary.

***Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

The Trustee contends that Movant has not met its burden to show that extraordinary circumstances exist for deviating from the well-established bankruptcy claims resolution process. The Court agrees.

***Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It is unclear whether the Debtor's insurance carrier, if any, has paid for costs of defending the State Court Action.

***Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

Movant argues there is no prejudice because all creditors will get paid a pro-rata share. However, the cost of liquidating Movant's claim in the State Court Action, potentially without any reason for doing so, may decrease the amount of funds available for unsecured creditors. This factor weighs against lifting the automatic stay.

***Whether the judgment claim arising from the foreign action is subject to***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

CONT...

**Kandy Kiss of California, Inc.**  
*equitable subordination under Section 510(c)*

Chapter 7

At this time, it does not appear that any resulting judgment that Movant may obtain in the State Court Action would be subject to equitable subordination.

***The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

This factor weighs in favor of lifting the automatic stay. The Debtor is one of four cross-defendants in the State Court Action. If the Court lifted the automatic stay, it would minimize potentially duplicative litigation in two different forums.

***Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

This factor weighs against lifting the automatic stay, because the State Court Action has not progressed to the point where the parties are prepared for trial. The State Court Action was stayed at the early stages of litigation. The parties have not expended significant resources in the State Court Action that would go to waste if the Court denies the Motion.

***The impact of the stay on the parties and the "balance of the hurt."***

Entry of judgment in the State Court Action would prejudice the Debtor. However, the Court can prohibit any enforcement of the judgment against the Debtor or the Debtor's estate during the pendency of its bankruptcy case. Still, lifting the stay does not appear warranted here because the State Court Action is at a very early stage, and allowing the parties to litigate the State Court Action may impede the administration of the Debtor's estate.

Movant contends that the Court lifting the automatic stay will ensure a level playing field because the Trustee is currently free to prosecute the State Court Action, but Movant is prevented from doing so by the automatic stay. However, the Trustee has not determined whether he will prosecute any of the Debtor's affirmative claims. Because the Trustee is not presently prosecuting the State Court Action, there is no need at this time for the Court to level the playing field. Accordingly, the "balance of the hurt" weighs against lifting the automatic stay.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

**III. CONCLUSION**

In light of the foregoing, Movant has not shown that mandatory abstention under 28 U.S.C. § 1334(c)(2) applies to the State Court Action. In addition, the *Sonnax* factors weigh against lifting the automatic stay. Movant has not shown sufficient cause under 11 U.S.C § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the Debtor.

Notwithstanding the foregoing, Movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 in the Debtor's bankruptcy case.

The Trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**#1.10 Motion for relief from stay [RP]**

U.S. BANK N.A.  
VS  
DEBTOR

fr. 1/24/18; 3/7/18; 4/11/18; 5/16/18; 6/6/18

Docket 47

**Tentative Ruling:**

Since the date of the first hearing on the motion, held on January 24, 2018, the Court has continued this hearing several times, on the parties' request.

If the parties have not resolved their dispute regarding the amount of the debtors' postpetition arrearages, in order for the Court to make that determination, the parties should be prepared to discuss the deadline for movant to file and serve its reply, and the setting of an evidentiary hearing.

**Party Information**

**Debtor(s):**

Faye Ellen Di Panni

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Robert Allen Di Panni

Represented By  
Jeffrey J Hagen

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka  
Armin M Kolenovic

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Faye Ellen Di Panni and Robert Allen Di Panni**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10204 Juan Talavera and Beatriz Talavera**

**Chapter 13**

**#1.20 Motion for relief from stay [RP]**

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

from: 6/6/18

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan Talavera

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Beatriz Talavera

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11238 Ken Nakamura**

**Chapter 7**

**#2.00 Motion for relief from stay [UD]**

DENIS O'SULLIVAN/GEROSABREN CORP. INC  
VS  
DEBTOR

Docket 16

**Tentative Ruling:**

Grant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2), and annulment of the automatic stay pursuant to § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

Grant movant's request to annul the automatic stay. "Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re Nat'l Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Here, movant was unaware of the debtor's bankruptcy petition before May 21, 2018, and the debtor acted unreasonably in a way that has prejudiced movant. Regarding movant's awareness, movant submitted a declaration attesting to the following: (i) on May 9, 2018, movant served a notice to quit upon the debtor; (ii) on May 14, 2018, the debtor filed his chapter 7 petition; (iii) on May 17, 2018, the debtor was served with the unlawful detainer complaint; and (iv) on May 21, 2018, movant first received notice of the debtor's chapter 7 bankruptcy case.

With respect to the debtor's conduct in the pending case, in his petition the debtor listed his residence address as "5434 Zelzah Avenue #220, Encino, CA 91316" (the "Property"). The Property is the subject of the pending motion. Although the debtor



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Ken Nakamura**

**Chapter 7**

listed movant in his schedules, the debtor has not opposed the pending motion. Based on the foregoing, it appears that the debtor's filing of his bankruptcy case was part of an effort to hinder movant's eviction proceedings. For these reasons, the Court finds that annulment of the automatic stay is warranted.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Ken Nakamura

Represented By  
Stephen L Burton

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11066 Wendy Shayne Brigode**

**Chapter 7**

**#3.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Wendy Shayne Brigode

Represented By  
Nicholas M Wajda

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10817 Christopher Ryan Amantia and Christine Rees Amantia**

**Chapter 7**

**#4.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Christopher Ryan Amantia

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Christine Rees Amantia

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10973 Fani Lucia Cano**

**Chapter 7**

**#5.00** Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Fani Lucia Cano

Represented By  
Carlos A Delgado Ibarcena

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11495 Steven Nia**

**Chapter 7**

**#6.00** Motion for relief from stay [RP]

STANLEY K. S. CHING AND CAROLYN J. CHING  
VS  
DEBTOR

Docket 139

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4). Grant annulment of the automatic stay pursuant to § 362(d)(1).

**I. BACKGROUND**

On February 1, 2011, Stanley and Carolyn Ching ("Movants"), Steven Nia (the "Debtor"), and Chongyi Liu executed an All-Inclusive Deed of Trust with Assignment of Rents ("Deed of Trust") as to the real property located at 24485 Park Granada, Calabasas, CA 91302 (the "Calabasas Property"). Movants are the beneficiaries under the Deed of Trust. The Debtor and Ms. Liu are the trustors under the Deed of Trust. (Real Property Declaration, doc. 139, Exh. A.)

On December 31, 2015, a deed transferring the Calabasas Property from the Debtor and Ms. Liu to Illusion Ventures, LLC was recorded in the Los Angeles County Recorder's Office [document no. 20151652832]. (Declaration of Alan Nahmias ("Nahmias Decl."), doc. 139, Exh. 5.)

On April 10, 2017, Illusion Ventures, LLC filed a voluntary chapter 7 petition, commencing case no. 1:17-10926-VK]. On April 25, 2017, Movants filed a motion for relief from stay in the Illusion Ventures, LLC case (the "Illusion Ventures RFS Motion") [1:17-10926-VK, doc. 10]. Movants argued that relief from stay was warranted (i) under 11 U.S.C. § 362(d)(1) on the grounds of bad faith; and (ii) under 11 U.S.C. § 362(d)(2) because there is no equity in the Calabasas Property and it is not necessary for an effective reorganization. In the Illusion Ventures RFS Motion, Movant alleged that the following additional judgment and tax liens encumber the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

Calabasas Property, in the total amount of \$461,555.79:

<b>Creditor</b>	<b>Amount</b>	<b>Recordation No.</b>
Maxim Integrated Products, Inc. ("Maxim")	\$182,073.62	20111427327
Buchalter Nemer, APC ("Buchalter")	\$134,193.85	20131678228
Internal Revenue Service ("IRS")	\$95,408.11	20140481862
Franchise Tax Board ("FTB")	\$35,260.21	20140769464
FTB	\$14,620.00	20160116785

(Illusion Ventures RFS Motion, at p. 9.)

On May 24, 2017, the Court held a hearing on and granted the Illusion Ventures RFS Motion. The Court posted its ruling to the Illusion Ventures, LLC case docket [1:17-10926-VK, doc. 24]. On May 31, 2017, the Court entered an order granting the Illusion Ventures RFS Motion [1:17-10926-VK, doc. 26]. A trustee's sale was scheduled for June 5, 2017.

On June 4, 2017, the Debtor filed the pending bankruptcy case. Movants' counsel contacted the Debtor's counsel and stated his belief that the automatic stay did not apply to the Calabasas Property because the Debtor was not on title. (Declaration of Alan Nahmias, doc. 17, ¶ 3.) The Debtor's counsel contended that the automatic stay applied because the Debtor's name was on the loan documents and he held an equitable interest in the Calabasas Property. (*Id.*) Movants found authority supporting their position. Accordingly, on June 7, 2017, Movants proceeded with the trustee's sale. (Real Property Decl., doc. 139, Exh D.)

On June 14, 2017, the Debtor filed his schedules [doc. 10]. On his petition, the Debtor listed his residence as 17977 Medley Drive, Encino, CA 91316-4377 (the "Encino Property") and his mailing address as "23679 Calabasas Road #1020, Calabasas, CA 91302." (Doc. 1, at p. 2.)

In his Schedule A/B, the Debtor listed the Calabasas Property [erroneously identified

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

as "24458 Park Granada"], indicating that he had an "equitable interest" in the Calabasas Property and that the Calabasas Property has a current value of \$2,100,000. (Doc. 10, at p. 5.) The Debtor also claimed an exemption in the Calabasas Property in the amount of \$10,000 under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5). (*Id.*, at p. 10.) According to the Debtor, encumbering the Calabasas Property are the following secured claims, in the total amount of \$1,892,000.00:

<b>Creditor</b>	<b>Amount</b>
Movants	\$100,000
Union Bank (1 <sup>st</sup> deed of trust)	\$1,592,000.00
Union Bank (2 <sup>nd</sup> deed of trust)	\$200,000.00

(*Id.*, at pp. 15-16.) The Debtor also lists the following secured claims purportedly encumbering only the Encino Property:

<b>Creditor</b>	<b>Amount</b>
Maxim	\$182,073.00
Buchalter	\$134,193.00
IRS	\$95,408.00
FTB	\$35,260.00
FTB	\$14,620.00

On June 21, 2017, Movants filed their first motion for relief from the automatic stay as to the Calabasas Property in this case (the "First RFS Motion") [doc. 17]. In the First RFS Motion, Movants sought annulment of any automatic stay that was in effect at the time of the foreclosure sale, and relief from the current automatic stay to proceed with the eviction of the Debtor and any other occupants from the Calabasas Property. Movants also requested *in rem* relief.

On July 13, 2017, the Court denied the First RFS Motion, in light of the concurrent conversion of the Debtor's case to chapter 7 [doc. 56]. On July 28, 2017, the Court entered an order denying the First RFS Motion [doc. 62].

On October 12, 2017, following the conversion of this case to chapter 7, this case was dismissed after the Debtor failed to file required documents [doc. 69]. On October 12, 2017, on the heels of that dismissal, the Debtor filed another chapter 11 case, case no.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

1:17-bk-12749-VK (the "Second Chapter 11 Case").

On October 26, 2017, the United States Trustee filed a motion to vacate the dismissal of this case [doc. 73]. The Debtor opposed that motion [doc. 76]. On November 14, 2017, the Court entered an order vacating the dismissal and reinstating this case [doc. 81].

On January 3, 2018, the Debtor attended his 341(a) meeting in this case. The Debtor testified that he did not reside at the Calabasas Property when he filed this case. (Doc. 139, Exh. 1, at p. 75.)

On February 7, 2018, David Gottlieb, chapter 7 trustee (the "Trustee") filed a *Motion for Order: (A) Authorizing Sale of Assets of the Debtor's Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances; (B) Approving Overbid Procedure; and (C) Approving Compromise of Controversy* (the "Sale Motion") [doc. 100]. Through the Sale Motion, the Trustee sought to sell to Movants: (i) the estate's interest in the Calabasas Property; (ii) the estate's interest in the Debtor's improper foreclosure claim against Movants; (iii) the estate's interest in the Debtor's motion for order to show cause re: contempt filed against the Movants on July 5, 2017; and (iv) the estate's interest in the litigation commenced by the Debtor's company against the Movants (collectively, the "Assets").

At the hearing on the Sale Motion on March 8, 2018, the Debtor was the successful overbidder, in the amount of \$60,000. On March 26, 2018, the Court entered an order granting the Sale Motion and approving the sale of the Assets to the Debtor [doc. 132].

On February 12, 2018, U.S. Bank, N.A. ("U.S. Bank") filed a motion for relief from the automatic stay as to the Encino Property [doc. 106]. On March 19, 2018, the Court entered an order granting U.S. Bank's motion [doc. 128]. On May 7, 2018, U.S. Bank foreclosed on the Encino Property. (Nahmias Decl., ¶ 21.)



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

CONT... Steven Nia

Chapter 7

Movants subsequently negotiated with the Debtor to resolve their various disputes, but they were unsuccessful. (Declaration of Alan Nahmias, doc. 139, ¶ 18.) On May 30, 2018, Movants filed the pending motion for relief from the automatic stay as to the Calabasas Property (the "Second RFS Motion") [doc. 139] and a request for judicial notice [doc. 142]. Movants also submitted an appraisal dated May 19, 2018, valuing the Calabasas Property at \$1,750,000. (Doc. 139, Exh. E, at pp. 43–63.) Movants seek substantially the same relief sought in the First RFS Motion. Movants allege that the monthly deed of trust payment on the Calabasas Property is \$8,019. The Debtor has not made 24 payments and has incurred arrearages in the total amount of \$192,456. (Real Property Declaration, at p. 8.) In addition, Movants allege that they have advanced \$76,000 for unpaid property taxes as to the Calabasas property. (*Id.*, at p. 7.) Movants further allege that the Debtor's family has been residing at the Calabasas Property during this time. (Real Property Declaration, at p. 12.)

On June 7, 2018, the Debtor filed an untimely opposition [doc. 147]. The opposition is not supported by declaration or any other admissible evidence. On June 13, 2018, Movants filed their reply [doc. 148].

## II. DISCUSSION

### A. *Request for Judicial Notice*

As an initial matter, the Court grants Movants' request for judicial notice [doc. 142]. Pursuant to Federal Rule of Evidence 201(b)(2), a court may judicially notice a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Federal courts "may take judicial notice of its own records in other cases[.]" *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). A court may also take judicial notice of "facts which are a matter of public record." *Tal v. Hogan*, 453 F.3d 1244, 1265 (10th Cir. 2006). Accordingly, the Court will take judicial notice of facts that are matters of public record and/or constitute its own records in other cases.

### B. *Calabasas Property*

Pursuant to 11 U.S.C. §541(a), property of the estate includes "*all legal or equitable interests* of the debtor in property as of the commencement of the case." (Emphasis

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

added.) Pursuant to 11 U.S.C. § 362(g):

In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

- (1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (2) the party opposing such relief has the burden of proof on all other issues.

Movants have met their burden of proof as regards the Debtor's equity in the Calabasas Property. Movants have provided evidence that the Debtor transferred the Calabasas Property to Illusion Ventures, LLC on December 31, 2015. (Nahmias Decl., Exh. 5.) Because of this transfer, the Debtor does not have any equity in the Calabasas Property. Even if the transfer had not occurred, Movants have established that the Calabasas Property is overencumbered.

The Debtor has not met his burden of proof as to his alleged equitable interest in the Calabasas Property. In opposing the First RFS Motion and the Second RFS Motion, the Debtor has not provided evidence supporting this equitable interest, such as evidence of deed of trust payments on the Calabasas Property.

In the Second RFS Motion, Movants again argue that the Calabasas Property was not subject to the automatic stay in this case. In support of their position, Movants cite *In re Torrez*, 132 B.R. 924 (Bankr. E.D. Cal. 1991) and *In re Trujillo*, 215 B.R. 200 (9th Cir. B.A.P. 1997), *aff'd*, 166 F.3d 1218 (9th Cir. 1998), *as amended* (Feb. 4, 1999).

However, it is unclear whether *Torrez* or *Trujillo* support Movant's position. *Trujillo* does not concern the application of the automatic stay; it concerns the avoidance of fraudulent transfers.

In *Torrez*, the bankruptcy court noted that the debtors still resided in the property at issue, even though such property was not property of the debtors' estate. If the lender sought to remove the debtors from the property through an unlawful detainer action, the lender would have to obtain relief from the automatic stay. *Torrez*, 132 B.R. at 941.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

CONT...

Steven Nia

Chapter 7

Here, Movants allege that the Debtor's family has been residing in the Calabasas Property. At the petition date, the Debtor listed the Encino Property as his residence. However, the Court granted relief from stay as to the Encino Property on March 19, 2018 [doc. 128]. On May 7, 2018, U.S. Bank foreclosed on the Encino Property. Thus, the Debtor may currently reside at the Calabasas Property. Accordingly, even if the Calabasas Property is not property of the estate, Movants need relief from the automatic stay in order to evict the Debtor and his family from the Calabasas Property.

**C. *Annulment of the Automatic Stay***

Despite the Debtor's prepetition transfer of title to Illusion Ventures, LLC, the Debtor contends that that Movants' foreclosure of the Calabasas Property violated the automatic stay in this case, because of his alleged equitable interest in the property. However, "annulment [of the automatic stay,] . . . if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 21 (9th Cir. B.A.P. 2003). In light of the circumstances of the Debtor's case, annulment of any automatic stay is warranted.

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Nat'l Envtl. Waste Corp. v City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997), *cert. denied*, 524 U.S. 952 (1998). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Additional factors courts consider when deciding whether to annul the stay include:

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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

exists to a bona fide purchaser;

4. The debtor's overall good faith (totality of circumstances test): *cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R. 87, 93 (9th Cir. B.A.P. 1988) (chapter 13 good faith);
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 debtors 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;
12. Whether stay relief will promote judicial economy or other efficiencies.

*Fjeldsted*, 293 B.R. at 25.

A review of the *Fjeldsted* factors shows that annulment of the automatic stay is warranted. The Illusion Ventures, LLC case was a prior, related case also affecting the Calabasas Property. In the prior case, the Court granted relief from the automatic stay to the Movants, in part on the grounds that the Illusion Ventures, LLC case had been filed in bad faith. Here, the circumstances also indicate an intention to delay and hinder creditors. The Debtor has not made deed of trust payments or paid property taxes on the Calabasas Property for several years. In addition, the Debtor's failure to comply with his statutory obligations led to the dismissal of this chapter 7 case, prior to its reinstatement. Under the totality of the circumstances, it appears that the Debtor has not acted in good faith.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

In addition, after the foreclosure sale on June 7, 2018, Movants moved quickly for annulment and acted expeditiously to gain relief. Movant filed the first RFS Motion on June 21, 2018.

Movants would be prejudiced because of the Debtor's continued failure to make deed of trust and property tax payments on the Calabasas Property. Lastly, when Movants proceeded with the foreclosure sale, they did so under the good faith belief that no stay existed as to the Calabasas Property, because the Debtor was not on title, having transferred the Calabasas Property, years prior, to Illusion Ventures, LLC. Accordingly, after balancing the equities, the Court will annul the automatic stay.

***D. 11 U.S.C. § 362(d)(1)***

Section 362(d)(1) provides that a "court shall grant relief from stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]"

Here, the Trustee sold the estate's interest in the Calabasas Property to the Debtor. Accordingly, the Calabasas Property is no longer property of the estate. To the extent that the automatic stay might still apply to the Calabasas Property, cause exists to lift the automatic stay pursuant to § 362(d)(1). Movants' interest in the Calabasas Property is not adequately protected. As to the Calabasas Property, the Debtor has not made monthly deed of trust payments or paid property taxes for two years.

***E. 11 U.S.C. § 362(d)(2)***

Section 362(d)(2) provides that a "court shall grant relief from the stay . . . (2) with respect to a stay of an act against property under subsection (a) of this section, if . . . (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization[.]"

On March 26, 2018, the Court entered an order granting the Sale Motion, approving the sale of the estate's interest in the Calabasas Property to the Debtor, along with other assets, for the amount of \$60,000 [doc. 132]. Thus, the Calabasas Property is presently not property of the estate. Consequently, it appears that Movants' request for relief under § 362(d)(2) is moot.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

*F. 11 U.S.C. § 362(d)(4)*

Finally, relief from the automatic stay is warranted under 11 U.S.C. § 362(d)(4).  
Section 362(d)(4) provides:

"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 conditioning such stay—

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

Multiple bankruptcy filings have affected the Calabasas Property. The Calabasas Property was an asset in the Illusion Ventures, LLC bankruptcy case, and the Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

contends that it is subject to the automatic stay in this case as well.

Despite transferring the Calabasas Property to Illusion Ventures, LLC, the Debtor contends that he held an equitable interest in the Calabasas Property as of the petition date, and that Movants' foreclosure sale violated the automatic stay. However, the Debtor has yet to produce evidence of this equitable interest. Moreover, with respect to the Calabasas Property, the Debtor has not made deed of trust payments or paid property taxes for several years. Under the totality of the circumstances, the Debtor's case appears to be part of a scheme to delay, hinder, or defraud Movants that involved multiple bankruptcy filings affecting the Calabasas Property.

**III. CONCLUSION**

In light of the foregoing, the Court will grant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4). Pursuant to § 362(d)(1), the Court also will annul the automatic stay.

Movants (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movants must submit the order within seven (7) days.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11285 Jason Noguera**

**Chapter 13**

**#7.00** Motion for relief from stay [UD]

SHELDON BAER, TRUSTEE OF THE BAER FAMILY TRUST  
VS  
DEBTOR

Docket 8

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 6/5/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jason Noguera

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

9:30 AM

1:15-12437 Robert Cox and Griselda Cox

Chapter 13

#8.00 Motion for relief from stay [RP]

CARRINGTON MORTGAGE SERVICES LLC  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

On June 16, 2018, the debtors filed a response to the motion [doc. 36]. In the response, the debtors state that they are willing to enter into an adequate protection agreement. The debtors also state that they have received a sizeable inheritance that will cure the arrears.

The response indicates that a declaration from the debtor's attorney is attached. However, no declaration or other evidence is attached to the response. Moreover, if the debtors have received such an inheritance, one or both of the debtors should be the declarant(s), not their bankruptcy counsel.

**Party Information**

**Debtor(s):**

Robert Cox

Represented By  
Stephen L Burton

**Joint Debtor(s):**

Griselda Cox

Represented By  
Stephen L Burton

**Movant(s):**

Carrington Mortgage Services, LLC

Represented By  
James F Lewin  
Melissa A Vermillion  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Robert Cox and Griselda Cox**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

9:30 AM

**1:13-15723 Teri Jaye Harrison**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MASTR  
ADJUSTABLE RATE MORTGAGES TRUST 2007-3 MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES 2007-3  
VS  
DEBTOR

**Stip filed 6/7/18**

Docket 55

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 6/14/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Teri Jaye Harrison

Represented By

Richard A Brownstein

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#9.10** Pretrial conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

fr. 1/10/18; 1/24/18, 6/6/18

Docket 1

**Tentative Ruling:**

On April 13, 2018, the Court entered an order granting the plaintiff relief from the automatic stay (the "Relief from Stay Order") [Bankruptcy Docket, doc. 183] to "proceed to final judgment" in state court and to "prosecute any appeal of an entered judgment...." Relief from Stay Order, ¶ 11. Given that the parties are continuing to litigate this matter in state court, the Court may stay this adversary proceeding, pending the conclusion of the state court litigation.

The parties should be prepared to discuss the status of the state court proceedings.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#10.00** Status conference re: complaint of Avigdor Kessler

from: 5/16/18

Docket 1

**Tentative Ruling:**

If the parties now have complied with Federal Rule of Bankruptcy Procedure 7026, the parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 8/15/18.

Deadline to complete one day of mediation: 8/31/18.

Deadline to file pretrial motions: 9/14/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/17/18.

Pretrial: 1:30 p.m. on 10/31/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

**Party Information**

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10123 Fred Horiat**

**Chapter 7**

Adv#: 1:18-01042 Ingram v. Horiat

**#11.00** Status conference re: complaint to determine dischargability of debt  
(11 U.S.C. §523(a)(5) and (a)(15))

Docket 1

**Tentative Ruling:**

See calendar no. 19.

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

**Debtor(s):**

Fred Horiat

Represented By  
David S Hagen

**Defendant(s):**

Fred Horiat

Pro Se

**Plaintiff(s):**

David Ingram

Represented By  
David L Ingram

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10353 Esteban Bustamante**

**Chapter 7**

Adv#: 1:18-01013 Sky One Federal Credit Union v. Bustamante

**#12.00** Status conference re complaint for: determination of the dischargeability of debt pursuant to 11 U.S.C. sec 523(A)(2)

fr. 4/18/18

**Stipulation for judgment filed 5/4/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Judgment entered 5/7/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Esteban Bustamante

Represented By  
Anthony E Contreras

**Defendant(s):**

Esteban Bustamante

Pro Se

**Plaintiff(s):**

Sky One Federal Credit Union

Represented By  
Alana B Anaya

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#13.00** Defendants Starr Babcock, Thomas Miller, Lawrence Yee, Richard Zanassi, Tracey McCormick and Danielle Lee's motion to dismiss second amended complaint

Docket 361

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation dismissing case entered 6/18/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Richard J Zanassi

Represented By  
Suzanne C Grandt

Tracey L McCormick

Represented By  
Suzanne C Grandt

Daniel A Lee

Represented By  
Suzanne C Grandt

Starr Babcock

Represented By  
Suzanne C Grandt

Thomas A Miller

Represented By  
Suzanne C Grandt

Lawrence Yee

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#14.00** Plaintiff's motion for leave to join additional party defendants pursuant to Fed. R. Bankr. Pro. 7020

fr. 2/7/18; 2/28/18

Docket 205

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation dismissing case entered 6/18/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Joseph Dunn

Represented By  
Kevin W Coleman  
Suzanne C Grandt

Kenneth E. Bacon

Represented By  
Kevin W Coleman  
Suzanne C Grandt

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#15.00** Defendant the State Bar of California's motion to compel production of documents and interrogatory responses by plaintiff Marilyn S. Scheer

Docket 400

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation dismissing case entered 6/18/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Richard J Zanassi

Represented By  
Suzanne C Grandt  
Marc A Shapp

Tracey L McCormick

Represented By  
Suzanne C Grandt  
Marc A Shapp

Daniel A Lee

Represented By  
Suzanne C Grandt  
Marc A Shapp

Starr Babcock

Represented By  
Suzanne C Grandt  
Marc A Shapp

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Marilyn S. Scheer**  
Thomas A Miller

**Chapter 7**

Represented By  
Suzanne C Grandt  
Marc A Shapp

Lawrence Yee

Represented By  
Suzanne C Grandt  
Marc A Shapp

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#16.00** Status conference re: second amended complaint for declaratory relief and monetary damages for (1) Violation of the automatic/permanent stays of 11 U.S.C. §§ 362, 524, & 727 and (2) Discriminatory treatment under 11 U.S.C. §525(a)

Docket 333

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation dismissing case entered 6/18/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Richard J Zanassi

Pro Se

Tracey L McCormick

Pro Se

Daniel A Lee

Pro Se

Starr Babcock

Pro Se

Thomas A Miller

Pro Se

Lawrence Yee

Pro Se

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

- #17.00** Motion for summary judgment, of plaintiff Mohammad Hassibi, moving for summary judgment holding a Texas State Court final judgment, against debtor Shahram Homayoun, for fraud, to be nondischargeable, per 11 USC §523(a)(2)

Docket 9

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

***A. The Texas Court Litigation***

On April 17, 2017, Mohammad Hassibi ("Plaintiff") filed a first amended complaint against Shahram Homayoun ("Defendant"), among others, in Texas state court (the "Texas Court"). Declaration of Michael Payma ("Payma Declaration"), ¶¶ 5, 8, Exhibits B, D. In relevant part, the State Court Complaint alleged:

Beginning in early 2016, Defendants sought to borrow money from Plaintiff and promised to repay the borrowed funds by issuing postdated checks to Plaintiff in various intervals. However, as payments became due, the checks issued by Defendants were not honored by their banks either because Defendants did not have sufficient funds or because Defendants had placed a stop payment on the checks.

As of the date of the filing of the State Court Complaint, Defendants owe Plaintiff \$178,954.87. Plaintiff has made numerous demands on Defendants, but despite acknowledging the debt, Defendants refuse to honor their obligations and repay the loans.

Defendants have committed fraud against Plaintiffs. At the time

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

**Maryam Azizi**

**Chapter 7**

Defendants induced Plaintiff to make the loans to Defendants and issued the worthless checks, Defendants knew they would not be able to repay the loans and that their checks would not be honored. Defendants' representations were material and false, and Defendants knew the representations were false. Defendants made the representations with the intent that Plaintiff would act on them, and Plaintiff relied on the representations. The representations caused Plaintiff injury. As such, Plaintiff seeks actual and exemplary damages against Defendants.

*Id.*, ¶ 8, Exhibit D. Defendant does not dispute that he received notice of the state court action (the "State Court Action"). Declaration of Shahram Homayoun ("Homayoun Declaration"), ¶ 3 ("I did not respond to the Texas lawsuit as I could not afford to hire counsel in Texas or to travel to Texas to defend the matter.").

On July 7, 2017, Plaintiff filed a motion for interlocutory default judgment against Defendant (the "Motion for Interlocutory Judgment"). *Id.*, ¶ 11, Exhibit F. Plaintiff did not provide evidence in connection with the Motion for Interlocutory Judgment. Rather, Plaintiff asked for an interlocutory judgment based on the pleadings alone. In addition, Plaintiff requested an interlocutory judgment of \$178,954.87 in liquidated damages, and noted that Plaintiff "will prove up his unliquidated damages... at a later date." *Id.*, Exhibit F, p. 3. Plaintiff did not specify whether his request for exemplary damages was based on fraud. On the same day, the Texas Court entered an interlocutory default judgment (the "Interlocutory Judgment") against Defendant. *Id.*, ¶ 12, Exhibit G. In the Interlocutory Judgment, the Texas Court held:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff have judgment against [Defendant and co-defendant], jointly and severally, on Plaintiff's claims for Common Law Fraud and Breach of Contract in the amount of One Hundred Seventy Eight Thousand Dollars and 87 Cents (\$178,954.87) as Plaintiff's actual damages.

The Court further makes a finding of fraud against [Defendant and co-defendant], and awards Plaintiff exemplary damages against [Defendant and co-defendant], jointly and severally.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Maryam Azizi**

**Chapter 7**

The Court shall conduct a hearing on Plaintiff's claim for attorney fees and unliquidated/exemplary damages at a later date.

*Id.* On July 17, 2017, Plaintiff filed a motion for final default judgment (the "Motion for Default Judgment"). *Id.*, ¶ 13, Exhibit H. Plaintiff did not provide evidence in support of the Motion for Default Judgment. Instead, Plaintiff asked for a hearing to determine the amount of exemplary damages and for entry of a final judgment. *Id.* In the Certificate of Service attached to the Motion for Default Judgment, Plaintiff indicated that he did not serve the Motion for Default Judgment on any parties. *Id.*

***B. The Damages Hearing***

On September 22, 2017, the Texas Court held a hearing on damages (the "Damages Hearing"). *Id.*, ¶ 13, Exhibit C. It is unclear if Defendant received notice of the Damages Hearing. At the Damages Hearing, the Texas Court noted that "actual judgments have already been entered by the Court as to liability and also on the... liquidated damages' portion of the claim." *Id.*, p. 23. The Texas Court further stated that "the only matter that was left to be determined, and the reason we're here is – because it requires testimony and evidence, is on the amount of the claims and the Court's ultimate determination of exemplary damages." *Id.*

At the Damages Hearing, Plaintiff testified that he provided Defendant with \$178,954.87 to be paid back within 30 or 45 days. *Id.* According to Plaintiff, at the time Plaintiff loaned the money to Defendant, Defendant provided Plaintiff checks to be cashed at the time the loan matured. *Id.* Plaintiff further testified that, at the time he attempted to cash the checks, Defendant's accounts were closed, and that some of the accounts had been closed before Defendant wrote the checks. *Id.* Plaintiff provided that he believed Defendant's actions were intentional, and that Defendant intended to commit fraud against Plaintiff. *Id.* Plaintiff further testified that Defendant knew about the lawsuit against him, but refused to cooperate. *Id.* After hearing Plaintiff's testimony, the Texas Court found:

And I – and based upon the testimony he's given I think that the request of \$150,000 in exemplary damages is really quite – almost generous on your part, and I have no problem at all in finding that that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

would be an appropriate amount. So I'm going to – in addition to the judgment for the liquidated damages, court costs, and the interest that's already been entered, I'm going to add an additional \$150,000 in exemplary damages to the judgment.

*Id.*, pp. 32-33. It is not clear from the transcript whether the Texas Court based its award of exemplary damages on fraud, malice or oppression.

On September 22, 2017, the Texas Court entered judgment against Defendant (the "State Court Judgment"). *Id.*, ¶ 15, Exhibit A. In relevant part, the State Court judgment provided:

On July 17, 2017 the Court entered an Interlocutory Default Judgment against [Defendant and co-defendant] and awarded Plaintiff the sum of \$178,954.87 in actual damages and made an affirmative finding of fraud against [Defendant and co-defendant]... jointly and severally. The court awarded exemplary damages against [Defendant and co-defendant] and ordered that an evidentiary hearing shall be held to determine the amount of exemplary damages, attorney fees and court costs.

On September 22, 2017, the court considered Plaintiff's Motion for Entry of Final default Judgment. After considering the Motion, the evidence and the argument of counsel, the court is of the opinion that a Final Judgment shall be entered.

IT IS THEREFORE, ORDERED, DECREED and ADJUDGED that Plaintiff... have judgment against Defendants, jointly and severally in the amount of \$178,954.87 on Plaintiff's claims for common law fraud, and makes an affirmative finding of fraud against Defendants....

IT IS FURTHER ORDERED, DECREED and ADJUDGED that Plaintiff shall recover exemplary damages against Defendants..., jointly and severally in the amount of \$150,000.00.

*Id.* The Texas Court also awarded Plaintiff \$1,239.24 in taxable court costs,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maryam Azizi**

**Chapter 7**

\$9,070.29 in prejudgment interest and postjudgment interest at the rate of 5% per annum. *Id.*

***C. Defendant's Bankruptcy Filing***

On October 12, 2017, Defendant and Maryam Azizi filed a voluntary chapter 7 petition. On December 20, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the State Court Judgment pursuant to 11 U.S.C. § 523(a)(2)(A). The Complaint is based entirely on the State Court Complaint and the State Court Judgment.

On January 22, 2018, Defendant received his chapter 7 discharge [doc. 14]. On January 30, 2018, Defendant's bankruptcy case was closed.

On April 9, 2018, Plaintiff filed a motion for summary judgment, asserting that the State Court Judgment precludes litigation of the Complaint and that this Court should enter judgment in favor of Plaintiff (the "Motion") [doc. 9]. On May 21, 2018, Defendant filed an opposition to the Motion (the "Opposition") [doc. 18], arguing that the State Court Judgment is not final and that the State Court Action was not "actually litigated" in Texas Court. Defendant also included a declaration, in which he states that, although Defendant personally guaranteed the checks, Channel Yek was the entity that issued the checks to Plaintiff. Homayoun Declaration, ¶ 3. Defendant further states that the checks from Channel Yek bounced because Channel Yek's business began to suffer, but that Defendant and Channel Yek intended to repay Plaintiff's loans at the time the loans were made. *Id.* On June 6, 2018, Plaintiff filed a reply to the Opposition [doc. 20].

**II. ANALYSIS**

***A. General Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

*Id.* at 248-50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

Here, the parties do not dispute any of the pertinent facts. Rather, the Motion presents issues of law, namely, whether the State Court Judgment precludes relitigation of this matter. As to that point, Defendant presents two legal arguments: (A) first, the State Court Judgment was not a "final judgment" as of the petition date; and (B) second, that the matter was not "actually litigated" in state court.

**B. Burden of Proof**

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523(a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

In addition, "[t]he party asserting issue preclusion bears the burden of proof and has the burden of bringing forward an adequate state-court record." *In re Clem*, 583 B.R. 329, 342 (Bankr. N.D. Tex. 2017) (citing *Matter of King*, 103 F.3d 17, 19 (5th Cir. 1997)); *see also Sysco Food Servs., Inc. v. Trapnell*, 890 S.W.2d 796, 801-02 (Tex. 1994).

**C. Final Judgment**

"For both *res judicata* and collateral estoppel, a previous judgment must be final in order to have preclusive effect." *In re Marshall*, 271 B.R. 858, 863 (C.D. Cal. 2001) (applying Texas law). In Texas, "judgments become final once the trial court loses plenary power over the judgment." *Id.* (citing *Gulf Ins. Co. v. Clarke*, 902 S.W.2d

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

156, 159 (Tex. App. 1995)). "Under Texas law, a trial court can grant a new trial or amend the judgment if a motion is filed by any party within thirty (30) days of the judgment being signed." *Id.* (citing Tex. R. Civ. P. 329b(a), (e)). Parties also are provided 30 days to file a notice of appeal. Tex. R. App. P. 26.1. Here, Defendant filed his chapter 7 petition prior to the expiration of either the deadline to appeal or the deadline to file a motion to amend the judgment.

Pursuant to 11 U.S.C. § 108—

- (b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—
- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
  - (2) 60 days after the order for relief.
- (c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—
- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
  - (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

Maryam Azizi

Chapter 7

respect to such claim.

Plaintiff cites § 108(b) as support for his proposition that the State Court Judgment became final before Plaintiff filed the Complaint. However, the relevant subsection of § 108 is actually § 108(c). In *Parker v. Bain*, 68 F.3d 1131 (9th Cir. 1995), the Ninth Circuit Court of Appeals held that 11 U.S.C. § 362(a)(1) serves to stay a debtor from filing an appeal of a decision in an action against the debtor. Here, the State Court Action was an action against Defendant. Consequently, as of the petition date, the automatic stay barred continuation of the State Court Action, including the filing of an appeal. *Parker*, 68 F.3d at 1135-36.

Here, the stay expired on January 22, 2018, the date Defendant received his chapter 7 discharge. 11 U.S.C. § 362(c)(2)(C). As such, under 11 U.S.C. § 108(c), Defendant had until February 21, 2018 to appeal the State Court Judgment. *See In re Hoffinger Industries, Inc.*, 329 F.3d 948, 952 (8th Cir. 2003); *In re Ingeniero*, 2007 WL 1453132 (Bankr. N.D. Cal. May 17, 2007); and *In re Lee*, 2008 WL 110391, at \*2 (Bankr. S.D. Tex. Jan. 8, 2008). Defendant did not file a notice of appeal. As a result, the State Court Judgment became final on February 22, 2018, after Plaintiff filed the Complaint.

For purposes of issue preclusion, it does not matter that the State Court Judgment became final after Plaintiff filed the Complaint in this Court. Where there are parallel proceedings involving the same issue, the first judgment is given preclusive effect even if the complaint in the other action was filed first. *Matter of Hansler*, 988 F.2d 35, 38 (5th Cir. 1993) (holding that Texas state court judgment had preclusive effect over adversary proceeding because the Texas court entered judgment first despite the fact that the adversary complaint was filed before the Texas complaint). Similarly, here, the State Court Judgment became final before any judgment rendered by this Court. As such, to the extent the other elements of issue preclusion are satisfied, the State Court Judgment is a final judgment potentially entitled to preclusive effect.

**D. Issue Preclusion**

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015); *see also* 28

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maryam Azizi**

**Chapter 7**

U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

"Under Texas law, a party asserting collateral estoppel (or issue preclusion) must establish: '(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) the facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action.'" *In re Rollins*, 534 B.R. 173, 178 (S.D. Cal. 2015) (citing *Calabrian Corp. v. Alliance Specialty Chems., Inc.*, 418 S.W.3d 154, 158 (Tex. App. 2013)).

Here, the parties do not dispute that they were cast as adversaries in the State Court Action or that the facts alleged in the Complaint were essential to the State Court Judgment. In fact, the Complaint fully incorporates the State Court Complaint and the State Court Judgment, without adding additional facts or law. As such, the issue to be determined is whether the matter was "fully and fairly litigated" in the State Court Action.

***i. No-Answer Default Judgments***

Texas law recognizes different types of default judgments. *Matter of Gober*, 100 F.3d 1195, 1204 (5th Cir. 1996).

One common type is the simple default where the defendant fails to answer the plaintiff's complaint. In a no-answer default judgment, it is said that the non-answering party has admitted the facts properly pled and the justice of the opponent's claim.

*Id.* (internal citations and quotations omitted). "Courts generally hold that no-answer default judgments fail to meet the 'actually litigated' prong of the issue preclusion test." *Id.* (citing *Matter of Shuler*, 722 F.2d 1253, 1257 n.6 (5th Cir. 1984); *In re Turner*, 144 B.R. 47, 51-53 (Bankr. E.D. Tex. 1992); and *In re Stowell*, 113 B.R. 322, 329 (Bankr. W.D. Tex. 1990)).

In *Shuler*, the Fifth Circuit Court of Appeals affirmed a bankruptcy court's decision not to apply issue preclusion to a no-answer default judgment where "the judgment... did not contain detailed facts sufficient as findings to meet the federal test of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

**Maryam Azizi**

**Chapter 7**

nondischargeability; it contained merely a conclusory statement that the plaintiff was entitled to judgment on a false-pretense cause of action." *Shuler*, 722 F.2d at 1257. The Court of Appeals concluded that "the bankruptcy court . . . properly refused to accord collateral estoppel effect to the conclusory false-pretense 'determination' in the state court judgment." *Id.* at 1258.

Courts have provided that other types of default judgment may provide preclusive effect. For instance, in *Matter of Garner*, 56 F.3d 677 (5th Cir. 1995), the default judgment at issue was a "post-answer default," meaning that the defendant had answered but had failed to appear for trial. *Garner*, 56 F.3d at 680. The Fifth Circuit Court of Appeals drew a distinction between a no-answer default, where the non-answering party is deemed to have admitted the facts properly pled, and a post-answer default, where a plaintiff "must offer evidence and prove his case as in a judgment upon a trial." *Id.* In *Garner*, although the defendant had answered the plaintiff's complaint, the defendant did not appear for trial, and the trial court conducted a trial in the defendant's absence. *Id.* "[B]ased on the testimony presented to the Court, the Court found and concluded that Plaintiff... was entitled to recover judgment against Defendants." *Id.* (internal quotations omitted). At the trial, the plaintiff "put on evidence sufficient to carry his burden of proof." *Id.* Although the judgment was technically a "default" judgment, under these facts, the *Garner* court held that the trial court judgment had preclusive effect. *Id.*

After *Garner*, the Fifth Circuit Court of Appeals decided *Matter of Pancake*, 106 F.3d 1242 (5th Cir. 1997). In *Pancake*, the Court of Appeals distinguished between the type of post-answer default in *Garner* and a situation where a court *strikes* an answer, thereby "creating a situation similar to that where no answer is filed, i.e., a no-answer default judgment." *Pancake*, 106 F.3d at 1244. The Court of Appeals explained:

For purposes of collateral estoppel... the critical inquiry is not directed at the nature of the default judgment but, rather, one must focus on whether an issue was fully and fairly litigated. Thus, even though *Pancake's* answer was struck, if Reliance can produce record evidence demonstrating that the state court conducted a hearing in which Reliance was put to its evidentiary burden, collateral estoppel may be found to be appropriate.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Maryam Azizi**  
*Id.*, at 1244-45.

**Chapter 7**

After *Pancake*, some courts have given preclusive effect to default judgments. For example, in *In re Harrison*, 180 Fed.Appx. 485 (5th Cir. 2006), the defendant filed an answer that was stricken for discovery abuse. Subsequently, the defendant's counsel informed the court that the defendant was aware of the proceedings but did not intend to appear for trial. *Harrison*, 180 Fed.Appx. at 486. The court held trial without the defendant. *Id.* At trial, the plaintiff "put on its evidence:"

It offered the testimony of [the plaintiff's] CEO who provided personal accounts and documentary evidence regarding [the defendant's] breach of fiduciary duty, fraud and the intentional nature of [the defendant's] actions. After receiving the evidence, the state court entered a default judgment for actual and punitive damages....

*Id.* After the defendant filed for bankruptcy, the plaintiff argued that the default judgment should be nondischargeable. *Id.*

The bankruptcy court held that the facts before it were similar to the facts in *Garner*. *Id.*, at 487. Specifically, the court found that "a default where the defendant's answer places the merits of the plaintiff's cause of action at issue, *where judgment cannot be entered on the pleadings*, and therefore, where a plaintiff in such a case must offer evidence to prove his case is more than just a garden variety default judgment." *Id.* (emphasis added). The bankruptcy court also found that the state court's record reflected that the plaintiff's testimony offered ample support for the judgment entered in state court. *Id.* The Fifth Circuit Court of Appeals agreed. *Id.*

The facts here are distinguishable from the facts in *Garner* and *Harrison*. Unlike the defendants in those cases, Defendant never filed an answer in the State Court Action and did not appear before the Texas Court. The Motion for Interlocutory Judgment and the Motion for Default Judgment did not provide evidence for the Texas Court to consider before entering judgment in favor of Plaintiff. Prior to the Damages Hearing, the Texas Court disposed of the issues of fraud and actual damages, based solely on the pleadings. Payma Declaration, ¶ 6, Exhibit C, p. 23 ("[We] are here to conduct a hearing on the amount of exemplary damages and attorney's fees.... *The Court will note that actual judgments have already been entered by the Court as to liability and*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT... **Maryam Azizi**

Chapter 7

*also on... the liquidated damages' portion of the claim.*") (emphasis added).

Here, the State Court Judgment is comparable to the "garden variety" no-answer default judgment; Texas courts have expressed a strong aversion to applying issue preclusion to this type of default judgment. *Harrison*, 180 Fed.Appx. at 487. Plaintiff's testimony at the Damages Hearing was not directed at establishing fraud; to make that determination, the Texas Court had adopted Plaintiff's allegations in the pleadings. At the hearing, Plaintiff's testimony was evaluated to determine the *amount* of exemplary damages to be awarded to Plaintiff, as a penalty for the nonpayment of Plaintiff's loans. As such, Plaintiff was never "put to [his] evidentiary burden" regarding his claim for fraud. In light of these facts, the Court concludes that the Texas Court's findings regarding fraud and actual damages were not "fully and fairly litigated," as contemplated by Texas law.

**ii. The Damages Hearing**

As noted above, the Texas Court held the Damages Hearing to adjudicate the amount of exemplary damages to be awarded to Plaintiff. Under Texas law, "exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud; (2) malice; *or* (3) gross negligence." Tex. Civ. Prac. & Rem. Code Ann. § 41.003(a) (emphasis added). The statute is written in the disjunctive, such that a finding of *either* fraud, malice *or* gross negligence may subject a defendant to liability for exemplary damages.

In *In re Rollins*, 534 B.R. 173 (Bankr. S.D. Cal. 2015), the parties entered into a joint venture agreement; the defendant was obligated to distribute videos and to pay a percentage of revenues to the plaintiff. After a dispute arose between the parties, the plaintiff filed a complaint against the defendant in Texas state court, alleging breach of contract, breach of fiduciary duty, fraud and malicious prosecution. *Rollins*, 534 B.R. at 175. The defendant, although properly served, did not respond. *Id.* The plaintiff moved for default judgment and submitted supporting affidavits. *Id.* Subsequently, the state court held a hearing, and the plaintiff presented evidence of damages. *Id.* After the hearing, the state court entered default judgment and awarded the plaintiff \$322,708.47 in damages for fraud, \$107,569.49 in actual damages and \$215,138.98 in exemplary damages. *Id.* In the judgment, the state court stated that it

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

considered "the pleadings, the papers on file in this case, and the evidence Plaintiff presented on liability and damages." *Id.*

The defendant later filed a bankruptcy case, and the plaintiff filed a complaint seeking nondischargeability of the state court judgment pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6). *Id.*, at 175-76. Asserting that the state court default judgment established its claims under § 523(a)(2)(A) and (a)(6), the plaintiff moved for summary judgment. *Id.* The defendant argued that the state court default judgment did not meet the "actually litigated" prong of the issue preclusion test. *Id.*, at 176. The bankruptcy court granted summary judgment, finding that the default judgment was entitled to preclusive effect. *Id.*, at 176-77.

On appeal, the district court disagreed. Relying on *Pancake* and *Gober*, the district court took into account that no-answer default judgments are rarely give preclusive effect. *Id.*, at 178-79. The district court also noted that punitive damages cannot be regarded as admitted by default. *Id.*, at 179.

In order to recover exemplary or punitive damages, the claimant must rely on a statute "establishing a cause of action authorizing exemplary damages" or otherwise prove "by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from: (1) fraud; (2) malice; or (3) gross negligence." Tex. Civ. Prac. & Rem. Code § 41.003(a). "Fraud" means "fraud other than constructive fraud." *Id.* § 41.001(6). "Malice" means "specific intent by the defendant to cause substantial injury or harm to the claimant." *Id.* § 41.001(7). To obtain exemplary damages for "gross negligence," the "[p]laintiffs must prove by clear and convincing evidence that 1) when viewed objectively from the defendant's standpoint at the time of the event, the act or omission involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others and 2) the defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others." *U-Haul Intern., Inc. v. Waldrip*, 380 S.W.3d 118, 137 (Tex.2012). A plaintiff must meet this same burden before recovering exemplary or punitive damages in a default judgment. *See In re Estate of*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Maryam Azizi**

**Chapter 7**

*Preston*, 346 S.W.3d 137, 168 (Tex.App.2011). In a default judgment, the issue of a litigant's "mental state" may be considered "fully and fairly litigated for collateral estoppel purposes[,] where punitive or exemplary damages are awarded. *Gober*, 100 F.3d at 1204.

*Id.* In light of this authority, the district court continued:

In this case, the record does not demonstrate that the elements of Appellees' common law fraud and malicious prosecution claims were actually litigated. In a no-answer default judgment, "the defendant is deemed to have admitted all of the plaintiff's allegations with respect to liability." *In re Gober*, 100 F.3d at 1204.

On the other hand, Appellees were required to present clear and convincing evidence of "fraud," "malice," or "gross negligence," as defined by Texas Civil Practice & Remedies Code section 41.001, in order to support the exemplary damages award. The Texas Judgment notes that the court considered "the pleadings, the papers on file in this case, and the evidence Plaintiff presented on liability and damages...." (Final Default Judgment, ECF No. 11-5 at 33).

*Id.* Despite the state court's hearing on damages, the *Rollins* court found:

The only factual findings contained in the Texas Judgment relate to service on Appellant and the amount of Appellees' damages. The Texas Judgment does not specify whether the Texas court's exemplary damages awards were based on findings of "fraud," "malice," or "gross negligence."

In support of their motion for summary judgment, Appellees submitted the affidavits that they filed in the Texas Action in support of their motion for default judgment. These affidavits contain conclusory allegations and do not demonstrate that any issue was actually litigated. *See, e.g.*, ECF No. 11-5 at 25 ("Rollins made material false representations in order to induce Elephant Productions, through Lowman and myself, to enter into an agreement for the production of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

**Maryam Azizi**

**Chapter 7**

the video); *id.* ("The lawsuit was frivolous on the merits, but was also deliberately filed in a court in California that did not have jurisdiction.").

Based on the summary judgment record presented in the bankruptcy court, where Appellees were burdened to demonstrate that collateral estoppel applied, *see Pardo*, 40 F.3d at 1066, the record is not sufficient to conclude that Appellant's alleged "fraud" or "malice" was fully and fairly litigated. The Texas court may have awarded exemplary damages based on a finding of "fraud," "malice," *or* "gross negligence." Because it is possible that the Texas court did not base its exemplary damages award on findings of "fraud" or "malice," it cannot be concluded that Appellant's alleged "fraud" or "malice" was fully and fairly litigated based on the present record.

*Id.*, at 179-80.

The facts here are similar to *Rollins*. As explained above, the Texas Court decided liability prior to the hearing on damages, without admitting proof and on the sole basis that Defendant did not respond to the State Court Complaint. As in *Rollins*, the Texas Court did hold an evidentiary hearing to decide the amount of exemplary damages to be awarded to Plaintiff. *See* Payma Declaration, ¶ 6, Exhibit C, p. 23. Plaintiff was "put to [his] evidentiary burden" only with respect to liquidation of exemplary damages. *Pancake*, 106 F.3d at 1245.

Although an award of exemplary damages under Texas law may be based on fraud, here, the Texas Court did not clarify its basis for the exemplary damages award at the Damages Hearing or in the State Court Judgment. Plaintiff also did not ask the Texas Court to award exemplary damages based on fraud; in his filings and during the Damages Hearing, Plaintiff made a general request for exemplary damages. At the end of the Damages Hearing, the Texas Court held that it was appropriate to award Plaintiff \$150,000 in exemplary damages, as requested by Plaintiff. Payma Declaration, ¶ 6, Exhibit C, pp. 32-33.

The State Court Judgment does not clarify the basis of the Texas Court's award of exemplary damages. Because the Texas Court did not specify whether its award of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

**Maryam Azizi**

**Chapter 7**

exemplary damages was based on fraud, malice or gross negligence, the award of exemplary damages could have been based on malice or gross negligence (as opposed to fraud).

Given that: (A) Plaintiff did not prove up his claim for fraud or actual damages; (B) the sole issue at the Damages Hearing was Plaintiff's entitlement to exemplary damages in a particular amount; (C) the Texas Court did not indicate, either at the Damages Hearing or in the State Court Judgment, that it based the award of exemplary damages on fraud; and (D) Plaintiff bears the burden of proving that issue preclusion applies, it is not appropriate, based solely on the State Court Judgment, to enter judgment in favor of Plaintiff at this time.

In his Declaration [doc. 18], Defendant states that, at the time he borrowed funds from Plaintiff, he intended to repay Plaintiff, that Defendant did pay back some of the funds owed to Plaintiff, and that the checks at issue bounced because Channel Yek's business began to suffer. Homayoun Declaration, ¶ 3. Because the State Court Judgment does not preclude litigation of these facts, there are genuine issues of material fact that prevent this Court from granting the Motion.

***E. The Rooker-Feldman Doctrine and Full Faith and Credit Clause***

Plaintiff alternatively argues that, in accordance with the Rooker-Feldman doctrine, this Court lacks jurisdiction to alter the State Court Judgment. A holding that a judgment does not have preclusive effect is not synonymous with altering that judgment. To find otherwise would mean that every refusal to assign preclusive effect to a state court judgment would run afoul of the Rooker-Feldman doctrine. The Court is not determining whether the State Court Judgment is valid; rather, the Court is merely deciding whether the State Court Judgment disposes of the issues under 11 U.S.C. § 523(a)(2)(A).

The Court's analysis also does not violate the full faith and credit clause. *See, e.g. Matter of Shuler*, 722 F.2d 1253, 1258 n.10 (5th Cir. 1984) ("Since the courts below properly assessed the collateral estoppel effect of the state court judgment in the present federal bankruptcy case, the full faith and credit principles of § 1738 have not been violated."). When assessing the application of issue preclusion, a court does not violate the full faith and credit clause by finding that a state court judgment does not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**     **Maryam Azizi**  
have preclusive effect.

**Chapter 7**

**III. CONCLUSION**

The Court will deny the Motion.

Defendant must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#18.00** Status conference re complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18; 5/16/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10123 Fred Horiat**

**Chapter 7**

Adv#: 1:18-01042 Ingram v. Horiat

**#19.00** Defendant's motion for order dismissing complaint for failure to state a cause of action

Docket 4

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On December 14, 2009, Fred Horiat ("Defendant") filed a chapter 13 petition, which the Court later converted to a chapter 7 case (the "Prior Case") [Case No. 1:09-bk-26822-MT]. In his amended schedule F [1:09-bk-26822-MT, doc. 32], Defendant listed a \$6,500.00 debt owed to David L. Ingram ("Plaintiff"), Defendant's former spouse's divorce attorney. On May 26, 2010, Defendant received a chapter 7 discharge [doc. 32].

On January 15, 2018, Defendant filed a voluntary chapter 7 petition. In his schedule E/F, Debtor listed a claim in favor of Plaintiff in the amount of \$6,000. Defendant indicated the claim was based on attorneys' fees arising from a dissolution proceeding.

On April 19, 2018, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of a debt owed to him pursuant to 11 U.S.C. § 523(a)(5) and (a)(15). In relevant part, the Complaint alleges:

On November 7, 2008, Defendant's ex-wife, Kimberly Madish, commenced a dissolution proceeding (the "Dissolution Proceeding"). On October 20, 2009, the parties filed a Stipulation and Order on Order to Show Cause (the "Order"). In the Order, Defendant agreed to pay \$6,000 to Ms. Madish as a contribution to her attorneys' fees. This obligation was for the benefit of Ms. Madish and constitutes a domestic support obligation under § 523(a)(5). Alternatively, the debt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

is a debt other than a domestic support obligation that is incurred in connection with a divorce decree, and is nondischargeable under § 523(a)(15).

Plaintiff attached the Order to the Complaint. In the Order, Ms. Madish acknowledged that she had received the spousal support arrears at issue in the Order to Show Cause. The Order also provided that Defendant would pay Ms. Madish \$6,000 in attorneys' fees (the "Debt"), to be paid at the rate of \$150 per month, beginning on August 1, 2009 and continuing until paid in full. Through the Order, Defendant is to remit payments directly to Plaintiff.

On April 24, 2018, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. Through the Motion, Defendant asserts that: (A) Plaintiff has not established that the Debt is in the nature of alimony, maintenance or support; (B) that Plaintiff does not have standing to bring an action under 11 U.S.C. § 523(a)(15); (C) that Defendant received a discharge of the Debt through the Prior Case; and (D) that an unspecified statute of limitations bars Plaintiff from bringing this action. Plaintiff has not timely filed a response to the Motion.

## **II. ANALYSIS**

### ***A. General Rule 12(b)(6) Standard***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT...

**Fred Horiat**

**Chapter 7**

factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Further, a court may consider 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 copy attached to the [Rule] 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). "The court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

***B. Sufficiency of Allegations Regarding 11 U.S.C. § 523(a)(5)***

Section 523(a)(5) excepts from discharge any debt for a "domestic support obligation." Pursuant to § 101(14A):

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of-

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

Here, three of the elements are met by the Order, and Defendant does not dispute that the following three elements are satisfied. First, the Order is "owed to or recoverable by" Defendant's "former spouse," because the Order states that Defendant "shall pay to *Petitioner* as and for a contribution to her attorney fees the sum of \$6,000.00...." Order, ¶ 2 (emphasis added). The Order identifies Ms. Madish as the petitioner. The Debt also was "established before... the order for relief" in this case by the applicable provisions of "an order of a court of record...." 11 U.S.C. § 101(14A)(C). Further, the Debt is not assigned to any other entity. 11 U.S.C. § 101(14A)(D).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

Defendant disputes the second element, i.e., that the Debt is "in the nature of alimony, maintenance, or support..." 11 U.S.C. § 101(14A)(B). "An award of attorney's fees in a marital dissolution proceeding may be in the nature of a domestic support obligation for the purposes of §§ 523(a)(5) and 101(14A)." *In re Gately*, 2016 WL 6777316, at \*3 (B.A.P. 9th Cir. Nov. 15, 2016) (citing *In re Gionis*, 170 B.R. 675, 682-84 (B.A.P. 9th Cir. 1994), *aff'd*, 92 F.3d 1192 (9th Cir. 1996)). "Labels in a divorce decree do not control the question of whether a fee award constitutes a domestic support obligation. Instead, the bankruptcy court must look behind the state court's award and make a factual inquiry to determine whether the award is actually in the nature of support." *Id.* (internal quotations omitted).

"For purposes of determining whether an exception to discharge applies to an obligation under § 523(a)(5), a bankruptcy court is not bound by the characterization given to an obligation by a state court. In determining whether an obligation is intended for spousal support, the bankruptcy court must look beyond the language of the dissolution judgment to the intent of the parties and to the substance of the obligation." *In re Diener*, 483 B.R. 196, 203 (B.A.P. 9th Cir. 2012) (citing *In re Shaver*, 736 F.2d 1314, 1316; *In re Combs*, 101 B.R. 609, 615 (B.A.P. 9th Cir. 1989)).

"For the substance of an obligation, if its 'intended function is to provide a necessity of life, it is ordinarily held to be nondischargeable' as a form of support." *In re Putnam*, 2012 WL 8134423, at \* 15 (Bankr. E.D. Cal. Aug. 30, 2012) (citing *In re Combs*, 101 B.R. 609, 615-16 (B.A.P. 9th Cir. 1989)). "Then, to ascertain the intent of the parties, the [Bankruptcy Appellate Panel of the Ninth Circuit] has identified several, non-exhaustive factors." *Id.* Those factors are:

1. The label given to the payments;
2. The context or location of the disputed provision in the decree;
3. The parties' negotiations and understanding of the provision;
4. Whether a lump sum or periodic monthly payments were provided for;
5. The relative earning power of the parties;
6. Whether the recipient spouse would be entitled to alimony under state law;
7. Whether interest accrues on the entire debt or only on the monthly payments past due;
8. Whether the debtor's obligation of payment terminates on the death or



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

remarriage of the recipient, or on the death of the debtor.

*Id.* (citing *Combs*, 101 B.R. at 616). "Along with these factors, the court should generally 'consider the surrounding circumstances and all other relevant incidents bearing on the parties' intent.' Yet, in determining intent, the court must only considers 'intention of the parties at the time they entered into their [marital settlement agreement], and not the current circumstances of the parties.'" *Id.* (citing *Combs*, 101 B.R. at 615-16).

Here, the Complaint does not include any allegations regarding most of these factors. At most, by way of incorporation of the Order into the Complaint, the Court is able to glean that the state court did not explicitly assign a label to the Debt, and that the state court provided for periodic monthly payments. Order, ¶ 2. However, Plaintiff has not made any allegations regarding the parties' negotiations, their relative earning power, whether Ms. Madish would be entitled to alimony under state law, the parties' intent in entering into the stipulation that led to the Order or the intent of the state court in entering the Order.

In *In re Taylor*, 455 B.R. 799 (Bankr. D.N.M. 2011), *aff'd*, 478 B.R. 419 (B.A.P. 10th Cir. 2012), *aff'd*, 737 F.3d 670 (10th Cir. 2013), the bankruptcy court held that the plaintiff's conclusory allegations regarding whether the debt was in the nature of support were insufficient for purposes of Rule 12(b)(6):

The Complaint filed in this adversary proceeding fails to allege any facts from which a trier of fact could determine that the recovery of the overpayment from Defendant, plus the attorneys' fees awarded in connection with the Judgment, is in the nature of support for the Plaintiff as creditor-spouse. Plaintiff argues that because the average consumer spends a substantial percentage of his or her annual paycheck on food, housing, and transportation, it is "highly probable" that Plaintiff will be able to prove that he needed the funds to make the overpayment to maintain his daily necessities. *See* Plaintiff's Response to Debtor's Motion to Dismiss Complaint Under Fed.R.Civ.P. 12(b)(6) and Fed. R. Bank. P. 7012(b) ("Response"), pp. 4–5 (Docket No. 6). However, no such allegations are made in the Complaint, and generalities and national averages are insufficient to establish that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

overpayment functions as support for Plaintiff. Absent any factual allegations regarding Plaintiff's financial condition and needs at the time the obligation arose, it is impossible to determine that the Judgment, including the award of attorneys' fees, is in the nature of support. Consequently, Plaintiff has failed to state a plausible cause of action under 11 U.S.C. § 523(a)(5).

*Taylor*, 455 B.R. at 807 (Bankr. D.N.M. 2011); *see also In re Towne*, 2009 WL 248429, at \*2 (Bankr. D. Kan. Feb. 3, 2009) ("The Complaint contains no factual allegations regarding the parties' relative financial circumstances at the time of the divorce.").

Similarly, Plaintiff does not allege any facts which, if taken true, would establish a claim under 11 U.S.C. § 523(a)(5). Plaintiff only generally alleges that the Debt is in the nature of alimony, maintenance or support. Without additional allegations regarding why the Debt is in the nature of the support, Plaintiff's § 523(a)(5) claim cannot survive.

***C. Sufficiency of Allegations Regarding 11 U.S.C. § 523(a)(15)***

Pursuant to 11 U.S.C. § 523(a)(15), a discharge does not discharge an individual debtor from any debt—

to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit....

11 U.S.C. § 523(a)(15).

[T]he trend in recent case law is to construe § 523(a)(15) expansively to cover a broader array of claims related to domestic relations within the discharge exception. *See, e.g., In re Wise*, 2012 WL 5399075, at \*6 (Bankr. E.D. Tex. Nov.5, 2012) (§ 523(a)(15) "rendered as non-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

dischargeable virtually all obligations arising between spouses as a result of a divorce decree."); *Quarterman v. Quarterman (In re Quarterman)*, 2012 Bankr. LEXIS 4924, at \*9–10 (Bankr. D. Ariz. October 17, 2012) ("The Section is not limited to simply divorce decree judgments alone but excepts any debt incurred by the debtor in the course of divorce or any debt in connection with a divorce decree.").

*In re Adam*, 2015 WL 1530086, at \*5-6 (B.A.P. 9th Cir. Apr. 6, 2015), *aff'd*, 677 F. App'x 353 (9th Cir. 2017).

Here, Plaintiff pleads a claim under 11 U.S.C. § 523(a)(15) as an alternative to 11 U.S.C. § 523(a)(15). Defendant does not dispute that the Debt was "incurred by the debtor in the course of a divorce of separation or in connection with a separation agreement, divorce decree or other order of a court of record...." 11 U.S.C. § 523(a)(15).

Rather, Defendant asserts that Plaintiff does not have standing under § 523(a)(15) because Plaintiff is not Defendant's "spouse, former spouse, or child." As to this point, *Putnam* provides a relevant analysis. 2012 WL 8134423, at \*7-8. In *Putnam*, the bankruptcy court decided a related issue: whether the debtor's former spouse had standing to pursue nondischargeability under 11 U.S.C. § 523(a)(5) and (a)(15). *Id.*, at \*7. The bankruptcy court noted that "[t]o determine whether [the former spouse], in fact, has any rights to payment or to an equitable remedy that can be enforced against [the debtor], the court must turn to state law." *Id.* (citing *In re Hassanally*, 208 B.R. 46, 49 (B.A.P. 9th Cir.1997) ("Absent an overriding federal interest, the existence of a claim in bankruptcy is generally determined by state law.")).

As a result, the bankruptcy court referred to California law to determine whether the debtor's former spouse could pursue an award of attorneys' fees made payable directly to the attorney. *Id.*, at \*8. The court found:

Under California law, the state court may order that one spouse pay the other spouse's attorney's fees and debts, made payable to the other spouse, as a means of providing spousal support. *See, e.g.*, Cal. Fam.Code §§ 272, 2023, 2030. The California Family Code also permits such obligations can be paid directly to the other spouse's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

attorney or creditors on behalf of the benefited spouse. For attorney's fees, section 272 provides, "Where the court orders one of the parties to pay attorney's fees and costs for the benefit of the other party, the fees and costs may, in the discretion of the court, be made *payable in whole or in part to the attorney* entitled thereto." Cal. Fam.Code § 272(a) (emphasis added).

*Id.*, at \*8. The court then referred to California Family Code § 272(b), which sets forth which parties may enforce an attorneys' fees provision in an order related to a dissolution proceeding. *Id.*, at \*9. Pursuant to California Family Code § 272(b), "the order providing for payment of the attorney's fees and costs *may be enforced directly by the attorney in the attorney's own name* or by the party in whose behalf the order was made." Cal. Fam. Code § 272(b) (emphasis added). As such, by operation of California Family Code § 272(b), Plaintiff may enforce the Order through this adversary proceeding.

Defendant's reliance on *In re Dollaga*, 260 B.R. 493 (B.A.P. 9th Cir. 2001), is misplaced. There, the Bankruptcy Appellate Panel of the Ninth Circuit had to assess whether one of the debtors' attorneys could assert a claim under § 523(a)(15) for fees incurred representing one of the debtors. *Dollaga*, 260 B.R. at 494.

[The plaintiff] has not alleged that the debtor's former spouse or children have any liability to her on the debt in question. This is no doubt due to the fact that [the plaintiff] represented the debtor, not the former spouse or children. We note that the *Smith* court was not confronted with this issue because as here, the creditor was the debtor's former counsel.

*Id.*, at 497. Here, Plaintiff did not represent Defendant in the dissolution proceeding. Plaintiff represented Defendant's former spouse, and so the facts here are distinguishable from the facts in *Dollaga*. Moreover, the Order attached to the Complaint specifies that Defendant "shall pay to Petitioner as and for a contribution to her attorney fees the sum of \$6,000.00...." Order, ¶ 2. As such, the Order explicitly awards the Debt to a "former spouse."

The final requirement of § 523(a)(15) is that the debt at issue is "not of the kind

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

described in" 11 U.S.C. § 523(a)(5). In the Complaint, Plaintiff alleges that "alternatively, [the debts] are debts other than domestic support obligations...." On the one hand, this is a conclusory allegation. On the other hand, at least one court found that, where a plaintiff was asserting a claim under § 523(a)(15) as an alternative theory, the following allegations were sufficient:

The Complaint alleges that the debt at issue representing overpayment of spousal support is a debt owing to a former spouse that was incurred in connection with a separation agreement, divorce decree, or other order of a court. *See* Complaint ¶ 12. Because the Complaint included a request for non-dischargeability under both 11 U.S.C. § 523(a)(5) and § (a)(15), the Court will consider Plaintiff's claim under 11 U.S.C. § 523(a)(15) as an alternative request for relief that necessarily includes an allegation that the debt is not a domestic support obligation. Taking these allegations as true, the Complaint states a claim under 11 U.S.C. § 523(a)(15). The Complaint alleges that 1) Defendant is a former spouse; 2) the debt for reimbursement \*808 of an overpayment of spousal support arose in connection with a divorce decree; and 3) the debt is not of a kind found in 11 U.S.C. § 523(a)(5).  
...

Further, BAPCPA's amendment of 11 U.S.C. § 523(a)(15) eliminated from consideration the debtor's ability to pay and the hardship on the former creditor-spouse arising from a discharge of the debt. Thus, for purposes of evaluating the sufficiency of Plaintiff's Complaint, the Court cannot find, as a matter of law, that Plaintiff's Complaint fails to state a claim of non-dischargeability under 11 U.S.C. § 523(a)(15).

*Taylor*, 455 B.R. at 807–09.

Likewise, the Complaint, including the incorporated Order, includes sufficient allegations that the Debt is owed to a "former spouse," and that the Debt was incurred in the course of a divorce. Under *Taylor*, it appears sufficient that, for the final element, Plaintiff merely alleges that if the Court finds the Debt is not within the purview of § 523(a)(5), it is covered by § 523(a)(15). As such, Plaintiff has included sufficient allegations under § 523(a)(15).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 20, 2018

Hearing Room 301

2:30 PM

CONT... Fred Horiat

Chapter 7

***D. Discharge***

In the Motion, Defendant asserts that the Debt was discharged through the Prior Case. However, to the extent the Court eventually find that the Debt comes within the purview of either 11 U.S.C. § 523(a)(5) or (a)(15), Plaintiff did not have to file a nondischargeability complaint to prevent the Debt from being discharged in the Prior Case.

Pursuant to Federal Rule of Bankruptcy Procedure 4007(c)—

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.

Fed. R. Bankr. P. 4007(c). In turn, 11 U.S.C. § 523(c)(1) provides—

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

11 U.S.C.A. § 523(c). Section 523(c) does not include debts covered by 11 U.S.C. § 523(a)(5) or (a)(15). As such, there is no time limit for creditors to file complaint under those subsection of 11 U.S.C. § 523. *See, e.g. In re Chaudry*, 569 B.R. 372, 374 (Bankr. D. N.J. 2017) ("Debts under § 523(a)(15) are not subject to any temporal requirement for the filing of an adversary complaint objecting to their discharge. *See* F.R.B.P. 4007(c). If the debt is characterized as one arising under

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Fred Horiat**

**Chapter 7**

§ 523(a)(15), then the claim is not dischargeable regardless of whether an adversary proceeding is filed within a certain timeframe."). As such, to the extent the Debt is encompassed by either 11 U.S.C. § 523(a)(5) or (a)(15), it was not discharged by the Prior Case.

***E. California's Statute of Limitations***

The final argument made by Defendant is that Plaintiff cannot collect the Debt because no payment has been made on account of the Debt in over four years. Defendant does not cite any authority for this proposition. Nevertheless, California Family Code § 291(a) provides that "[a] money judgment..., including a judgment for child, family, or spousal support, is enforceable *until paid in full or otherwise satisfied*." Cal. Fam. Code § 291(a) (emphasis added). As such, under California law, spousal support payments are not subject to any statute of limitation.

**III. CONCLUSION**

The Court will grant the Motion as to Plaintiff's claim under 11 U.S.C. § 523(a)(5). The Court will deny the Motion as to Plaintiff's claim under 11 U.S.C. § 523(a)(15).

Defendant must submit an order within seven (7) days. If Plaintiff intends to file an amended complaint, Plaintiff must file the amended complaint no later than **14 days** after entry of the order on the Motion. If Plaintiff has not filed an amended complaint within 14 days after entry of the order on the Motion, Defendant must file an answer to the Complaint no later than **21 days** after entry of the order on the Motion.

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

**Debtor(s):**

Fred Horiat

Represented By  
David S Hagen

**Defendant(s):**

Fred Horiat

Represented By  
David S Hagen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Fred Horiat**

**Chapter 7**

**Plaintiff(s):**

David Ingram

Represented By  
David L Ingram

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 20, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#20.00** Application for examination re: enforcement of judgment

Docket 76

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alice Sungjin Cheong Pro Se

**Defendant(s):**

DOES 1 through 10, inclusive Pro Se

**Plaintiff(s):**

Mi Hee Kim  
Represented By  
Daren M Schlecter  
Konrad L Trope  
Kaela Haydu  
Ronald P Slates

KYUNG CHUL KIM  
Represented By  
Daren M Schlecter  
Kaela Haydu  
Ronald P Slates

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**1:14-12922 Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

**#1.00 Final Fee Application of Philip D Dapeer, Debtor's Attorney, for fees and expenses**

Docket 423

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(H), applicant has not attached a description of the professional education and experience of each of the individuals rendering services, including identification of the professional school attended, year of graduation, year admitted to practice, publications or other achievements, and explanation of any specialized background or expertise in bankruptcy-related matters. A statement that such information is attached to applicant's employment application does not suffice.

Philip D. Dapeer, A Law Corporation ("Applicant"), counsel to the reorganized debtors – approve fees in the amount of \$190,760.00 and reimbursement of expenses in the amount of \$13,452.43, pursuant to 11 U.S.C. § 330. Applicant is authorized to draw down on the \$40,000 post-petition retainer in partial satisfaction of the above fees. Applicant is also authorized to receive the balance of \$150,760.00 in fees and \$13,452.43 for reimbursement of expenses. The Court has not allowed fees in the amount of \$102,000.00 for the reasons below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Robert Lee Alderman and Noni Elizabeth Alderman Chapter 11**

compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

The Court will not approve the following fee because it appears to have been miscategorized:

Date	Description	Time	Fee
8/1/2016	COURT CALL FEE.	0.60	\$240.00

The Court will reduce the following fees by 50%, as they appear excessive in light of Applicant’s experience, and the relative complexity of the work performed compared to the time billed:

Date	Description	Time	Fee	Adjusted Time	Adjusted Fee
2/13/2015	FILE REVIEW; TELEPHONE CONFERENCES CLIENTS; DRAFT, EDIT DECLARATION RE EMPLOYMENT OF COUNSEL.	6.70	\$2,680.00	3.35	\$1,340.00
2/14/2015	FILE REVIEW.	8.30	\$3,320.00	4.15	\$1,660.00
2/15/2015	RESEARCH OPPOSITION TO LIFT STAY.	7.60	\$3,040.00	3.80	\$1,520.00
2/16/2015	RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTION.	7.30	\$2,920.00	3.65	\$1,460.00
2/17/2015	RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTION.	8.40	\$3,360.00	4.20	\$1,680.00
2/17/2015	EDIT OPPOSITION MEMORANDUM; DRAFT OPPOSITION DECLARATION.	3.50	\$1,400.00	1.75	\$700.00
2/18/2015	EDIT, CORRECT, REVISE OPPOSITION TO LIFT STAY MOTION; E-MAILS AND TELEPHONE CONFERENCES CLIENTS RE OPPOSITION.	8.50	\$3,400.00	4.25	\$1,700.00
2/20/2015	FILE REVIEW RE WOR PRODUCT FORMER COUNSEL.	9.60	\$3,840.00	4.80	\$1,920.00
2/21/2015	DRAFT RETAINER AGREEMENT AND EMPLOYMENT APPLICATION.	3.50	\$1,400.00	1.75	\$700.00
2/22/2015	REVIEW FORMER COUNSEL'S FILES AND DOCKET DOCUMENTS.	9.20	\$3,680.00	4.60	\$1,840.00
2/23/2015	FILE REVIEW AS REPLACEMENT COUNSEL.	8.30	\$3,320.00	4.15	\$1,660.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

2/24/2015	RESEARCH FILED DOCUMENTS RE PLAN FEASIBILITY.	8.10	\$3,240.00	4.05	\$1,620.00
2/25/2015	RESEARCH AND REVIEW FILED DOCUMENTS RE CASE STATUS AND PROPOSAL PLAN AND DISCLOSURE STATEMENT; REVIEW UNDERLYING LOAN DOCUMENTS.	6.90	\$2,760.00	3.45	\$1,380.00
2/26/2015	FILE REVIEW RE CASE STATUS; RESEARCH RE PLAN AND DISCLOSURE STATEMENT.	8.50	\$3,400.00	4.25	\$1,700.00
2/28/2015	DRAFT STATUS REPORT.	1.70	\$680.00	0.85	\$340.00
3/2/2015	REVIEW DOCKET FILER AND PRIOR COUNSEL'S FILES.	3.60	\$1,440.00	1.80	\$720.00
3/20/2015	CONFERENCE WITH CLIENT; RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTION;	5.90	\$2,360.00	2.95	\$1,180.00
3/21/2015	RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTIONS; E-MAILS CLIENT; TELEPHONE CONFERENCE CLIENT RE: MOTION.	10.50	\$4,200.00	5.25	\$2,100.00
3/22/2015	DRAFT OPPOSITION TO LIFT STAY MOTIONS; TELEPHONE CONFERENCES, E-MAILS CLIENTS.	7.00	\$2,800.00	3.50	\$1,400.00
5/25/2015	RESEARCH MOTIONS TO VALUE.	6.40	\$2,560.00	3.20	\$1,280.00
5/27/2015	DRAFT MOTION TO VALUE.	6.20	\$2,480.00	3.10	\$1,240.00
5/28/2015	EDIT MOTIONS TO VALUE; E-MAILS CLIENTS.	2.50	\$1,000.00	1.25	\$500.00
6/1/2015	EDIT VALUATION MOTIONS.	3.60	\$1,440.00	1.80	\$720.00
6/2/2015	EDIT VALUATION MOTIONS.	2.00	\$800.00	1.00	\$400.00
6/8/2015	DRAFT OPPOSITION TO LIFT STAY MOTION.	3.50	\$1,400.00	1.75	\$700.00
6/9/2015	RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTION.	5.20	\$2,080.00	2.60	\$1,040.00
6/19/2015	RESEARCH CLAIMS.	6.30	\$2,520.00	3.15	\$1,260.00
6/22/2015	RESEARCH CLAIMS; PREPARE AMENDED SCHEDULES.	8.60	\$3,440.00	4.30	\$1,720.00
6/23/2015	DRAFT AMENDED SCHEDULES.	8.40	\$3,360.00	4.20	\$1,680.00
6/25/2015	PREPARE FOR STATUS CONFERENCE.	2.50	\$1,000.00	1.25	\$500.00
6/25/2015	PREPARE CLAIMS BAR DATE NOTICE; TELEPHONE CONFERENCE CLIENT RE COURT RULING 6/24/15.	1.80	\$720.00	0.90	\$360.00
7/1/2015	REVIEW E-MAILS RE PENNYMAC ISSUES.	2.60	\$1,040.00	1.30	\$520.00
7/2/2015	REVIEW ORDERS RE VALUATION HEARINGS; PREPARE FOR HEARING ON VALUATION MOTIONS.	2.00	\$800.00	1.00	\$400.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

7/3/2015	REVIEW GARON E-MAILS RE PENNYMAC CLAIMS; E-MAILS TO CLIENT RE SAME; FILE REVIEW RE SCHEDULES.	3.40	\$1,360.00	1.70	\$680.00
7/6/2015	PREPARE FOR VALUATION HEARING.	2.50	\$1,000.00	1.25	\$500.00
7/8/2015	REVIEW E-MAILS RE PENNYMAC ISSUES TELEPHONE CONFERENCE CLIENT RE APOS; FILE REVIEW.	5.70	\$2,280.00	2.85	\$1,140.00
7/12/2015	DRAFT PLAN; REVIEW LENDER PENNYMAC E-MAILS.	4.00	\$1,600.00	2.00	\$800.00
7/14/2015	DRAFT REVISED VALUATION MOTIONS.	5.20	\$2,080.00	2.60	\$1,040.00
7/26/2015	DRAFT MOTION TO CONTINUE DISCLOSURE STATEMENT; E-MAIL ATTORNEY PENNYMAC RE STIPULATION.	2.50	\$1,000.00	1.25	\$500.00
7/31/2015	DRAFT, RESEARCH REPLIES TO OPPOSITION TO VALUATION MOTIONS.	4.20	\$1,680.00	2.10	\$840.00
8/5/2015	RESEARCH, DRAFT REPLY TO VALUATION MOTIONS.	8.60	\$3,440.00	4.30	\$1,720.00
8/11/2015	DRAFT AMENDED VALUATION MOTIONS.	5.50	\$2,200.00	2.75	\$1,100.00
8/14/2015	DRAFT AMENDED MOTION TO VALUE.	5.00	\$2,000.00	2.50	\$1,000.00
8/21/2015	DRAFT PLAN AND DISCLOSURE STATEMENT.	9.70	\$3,880.00	4.85	\$1,940.00
8/23/2015	DRAFT MOTIONS TO VALUE; FILE REVIEW.	3.80	\$1,520.00	1.90	\$760.00
8/27/2015	DRAFT MOTION TO VALUE FOR 2232 COLD CANYON.	2.50	\$1,000.00	1.25	\$500.00
8/27/2015	DRAFT MOTION TO VALUE FOR 1202 BRUNSWICK LN.	1.70	\$680.00	0.85	\$340.00
8/27/2015	DRAFT MOTION TO VALUE FOR 23712 VALLEY VIEW ROAD.	1.80	\$720.00	0.90	\$360.00
8/27/2015	DRAFT MOTION TO VALUE RE 1954 COLD CANYON RD.	2.20	\$880.00	1.10	\$440.00
8/28/2015	DRAFT MOTION TO VALUE 1954 COLD CANYON; E-MAIL CLIENT.	2.10	\$840.00	1.05	\$420.00
8/28/2015	EDIT MOTION TO VALUE 2232 COLD CANYON.	1.50	\$600.00	0.75	\$300.00
8/29/2015	EDIT, CORRECT VALUATION MOTIONS; RESEARCH RECORDED DEEDS.	4.50	\$1,800.00	2.25	\$900.00
8/30/2015	DRAFT PLAN AND DISCLOSURE STATEMENT.	6.30	\$2,520.00	3.15	\$1,260.00
8/31/2015	EDIT, CORRECT VALUATION MOTIONS.	3.30	\$1,320.00	1.65	\$660.00
9/6/2015	FILE REVIEW RE VALUATION MOTION; TELEPHONE CONFERENCE CLIENT.	3.90	\$1,560.00	1.95	\$780.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

**10:30 AM**

**CONT...**

**Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

10/3/2015	DRAFT REPLY TO MOTION TO VALUE OPPOSITION AND STATUS REPORT; E-MAIL CLIENT RE: SAME.	7.80	\$3,120.00	3.90	\$1,560.00
10/6/2015	EDIT, CORRECT STATUS REPORT AND REPLIES RE: MOTIONS TO VALUE.	2.50	\$1,000.00	1.25	\$500.00
10/31/2015	RESEARCH, DRAFT OPPOSITION TO LIFT STAY MOTION.	6.40	\$2,560.00	3.20	\$1,280.00
11/2/2015	EDIT, CORRECT OPPOSITION TO LIFT STAY PERSONAL PROPERTY.	2.50	\$1,000.00	1.25	\$500.00
11/3/2015	EDIT, CORRECT OPPOSITION TO LIFT STAY PERSONAL PROPERTY.	1.50	\$600.00	0.75	\$300.00
11/17/2015	RESEARCH RE LIFT STAY REPLY; REVIEW REPLY.	3.50	\$1,400.00	1.75	\$700.00
11/28/2015	DRAFT PLAN AND DISCLOSURE STATEMENT; E-MAILS ATTORNEY GORAN; REVIEW VALUATION ORDER.	8.30	\$3,320.00	4.15	\$1,660.00
11/29/2015	DRAFT STATUS REPORT.	2.00	\$800.00	1.00	\$400.00
12/2/2015	DRAFT PLAN AND DISCLOSURE STATEMENT.	9.30	\$3,720.00	4.65	\$1,860.00
12/5/2015	DRAFT PLAN AND DISCLOSURE STATEMENT.	11.50	\$4,600.00	5.75	\$2,300.00
12/6/2015	DRAFT PLAN AND DISCLOSURE STATEMENT.	9.20	\$3,680.00	4.60	\$1,840.00
12/8/2015	EDIT, CORRECT PLAN AND DISCLOSURE STATEMENT.	9.00	\$3,600.00	4.50	\$1,800.00
12/9/2015	EDIT, PLAN AND DISCLOSURE STATEMENT.	1.80	\$720.00	0.90	\$360.00
12/10/2015	EDIT, REVISE PLAN AND DISCLOSURE STATEMENT.	3.60	\$1,440.00	1.80	\$720.00
1/1/2016	DRAFT AMENDED PLAN AND DISCLOSURE STATEMENT; EDIT PLAN, DISCLOSURE STATEMENT, EXHIBITS; RESEARCH TAX CLAIMS.	9.50	\$3,800.00	4.75	\$1,900.00
1/11/2016	REVIEW EMAILS FROM CLIENT RE DISCLOSURE STATEMENT AND LETTER FROM BOAT LENDER.	2.90	\$1,160.00	1.45	\$580.00
1/14/2016	EDIT, REVISE SCHEDULES; E-MAILS AND TELEPHONE CONFERENCES CLIENT.	8.10	\$3,240.00	4.05	\$1,620.00
1/28/2016	REVIEW NINTH CIRCUIT OPINION; E-MAIL CLIENT; REVIEW PLAN AND DISCLOSURE STATEMENT.	4.60	\$1,840.00	2.30	\$920.00
1/29/2016	TELEPHONE CONFERENCE CLIENTS RE ABSOLUTE PRIORITY RULE; TELEPHONE CONFERENCE ATTORNEY LENDERS; FILE REVIEW; RESEARCH.	4.40	\$1,760.00	2.20	\$880.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

**10:30 AM**

**CONT...**

**Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

2/6/2016	DRAFT OPPOSITION TO EX PARTE APPLICATION; TELEPHONE CONFERENCES CLIENT; REVIEW CLIENT E-MAILS.	6.70	\$2,680.00	3.35	\$1,340.00
2/8/2016	DRAFT OPPOSITION TO EX PARTE APPLICATION.	3.00	\$1,200.00	1.50	\$600.00
2/8/2016	EDIT AND CORRECT OPPOSITION TO RELIEF FROM STAY.	1.80	\$720.00	0.90	\$360.00
3/10/2016	FILE REVIEW RE PLAN AND DISCLOSURE STATEMENT.	3.30	\$1,320.00	1.65	\$660.00
3/11/2016	DRAFT AMENDED PLAN.	5.50	\$2,200.00	2.75	\$1,100.00
3/13/2016	DRAFT MEMO TO CLIENT; DRAFT AMENDED PLAN.	8.50	\$3,400.00	4.25	\$1,700.00
3/26/2016	DRAFT AMENDED PLAN; RESEARCH.	7.30	\$2,920.00	3.65	\$1,460.00
4/2/2016	EDIT AMENDED PLAN; FILE REVIEW; TELEPHONE CONFERENCE CLIENT; REVIEW PROJECTIONS.	3.50	\$1,400.00	1.75	\$700.00
4/6/2016	REVIEW PLAN DOCUMENTS; SERVE AND FILE.	2.90	\$1,160.00	1.45	\$580.00
5/11/2016	REVIEW PLAN TREATMENT STIPULATION; DRAFT STATUS REPORT; AMEND DISCLOSURE STATEMENT E-MAILS RE STIPULATIONS.	5.20	\$2,080.00	2.60	\$1,040.00
5/20/2016	DRAFT AMENDED PLAN AND DISCLOSURE STATEMENT.	7.50	\$3,000.00	3.75	\$1,500.00
6/11/2016	DRAFT AMENDED PLAN AND DISCLOSURE STATEMENT; E-MAILS AND TELEPHONE CONFERENCES CLIENT.	9.00	\$3,600.00	4.50	\$1,800.00
6/18/2016	EDIT AMENDMENT TO PLAN; E-MAILS RE PAN PROPERTY; E-MAILS ATTORNEY LENDER.	3.30	\$1,320.00	1.65	\$660.00
6/19/2016	FILE REVIEW; REVIEW CLIENT PROJECTIONS AND STIPULATIONS.	3.80	\$1,520.00	1.90	\$760.00
9/24/2016	DRAFT PLAN AND DISCLOSURE STATEMENT.	6.00	\$2,400.00	3.00	\$1,200.00
9/27/2016	EDIT PLAN AND DISCLOSURE STATEMENT.	4.50	\$1,800.00	2.25	\$900.00
9/28/2016	ASSEMBLE MOTION TO APPROVE DISCLOSURE STATEMENT, PLAN, DISCLOSURE STATEMENT; TELEPHONE CONFERENCE CLIENT.	1.50	\$600.00	0.75	\$300.00
10/12/2016	REVIEW AND CORRECT PLAN.	2.50	\$1,000.00	1.25	\$500.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 21, 2018

Hearing Room 301

10:30 AM

CONT... **Robert Lee Alderman and Noni Elizabeth Alderman**

Chapter 11

10/20/2016	REVIEW STIPULATION RE PLAN MODIFICATION.	1.20	\$480.00	0.60	\$240.00
10/21/2016	TELEPHONE CONFERENCE ATTORNEY LAREN REVIEW STIPULATION; FILE REVIEW.	1.40	\$560.00	0.70	\$280.00
12/31/2016	DRAFT CONFIRMATION PLEADINGS AND DECLARATION.	9.70	\$3,880.00	4.85	\$1,940.00
1/4/2017	EDIT CONFIRMATION PLEADINGS.	2.80	\$1,120.00	1.40	\$560.00
1/9/2017	ASSEMBLE CONFIRMATION POS ; CONFERENCES DEBTORS.	2.80	\$1,120.00	1.40	\$560.00
1/31/2017	DRAFT AMENDED PLAN.	4.50	\$1,800.00	2.25	\$900.00
2/4/2017	DRAFT AMENDED PLAN.	4.50	\$1,800.00	2.25	\$900.00
2/12/2017	ASSEMBLE, EDIT PLAN AND DISCLOSURE STATEMENT TELEPHONE CONFERENCES CLIENT.	4.30	\$1,720.00	2.15	\$860.00

The Court also notes that Applicant requests approval of \$6,840.00 in fees for services performed on the reorganized debtors' disclosure statement and plan between August 24, 2016 and October 21, 2016. These fees appear to be excessive in light of the quality of Applicant's work. For example, Applicant (i) did not properly serve the disclosure statement and plan on one occasion; and (ii) did not attach the correct stipulations to the plan or incorporate their terms into the plan on two occasions. These and other issues with the disclosure statement and plan necessitated a continued hearing. Based on the foregoing, the Court has reduced by 50% Applicant's fees for services performed on the debtor's disclosure statement and plan during this time period.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 21, 2018

Hearing Room 301

10:30 AM

CONT... Robert Lee Alderman and Noni Elizabeth Alderman  
disallowed.").

Chapter 11

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below:

Date	Description	Time	Fee
2/28/2015	FILE REVIEW RE DOCKET ENTRIES.	3.90	\$1,560.00
9/2/2015	CHECK ASSEMBLED MOTION TO VALUE.	1.80	\$720.00
9/3/2015	ASSEMBLE MOTIONS TO VALUE FOR SERVICE.	0.90	\$360.00
9/18/2015	PREPARE PROOF OF SERVICE FOR JP MORGAN CHASE BANK.	0.50	\$200.00
9/21/2015	EDIT PROOF OF SERVICE 23712 VALLEY VIEW.	0.40	\$160.00
11/25/2016	PREPARE PROOFS OF SERVICE OF CONFIRMATION PACKAGE.	1.50	\$600.00
11/28/2016	DRAFT PROOF OF SERVICE.	0.40	\$160.00

Applicant must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Robert Lee Alderman

Represented By  
George J Paukert  
Philip D Dapeer

**Joint Debtor(s):**

Noni Elizabeth Alderman

Represented By  
George J Paukert  
Philip D Dapeer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**1:16-11295 Mylene T Nguyen**

**Chapter 7**

**#2.00** Trustee's final report and applications for compensation

Diane Weil, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill, LLP, Attorneys for Trustee

SLBiggs, A Division of SingerLewak, Accountant's for Trustee

Docket 59

**Tentative Ruling:**

Diane C. Weil, chapter 7 trustee – approve fees of \$6,375.00 and reimbursement of expenses of \$36.73.

Levene Neale Bender Yoo & Brill, LLP (“Levene Neale”), counsel to chapter 7 trustee – approve fees of \$23,665.00 and reimbursement of expenses of \$232.33. Pursuant to the stipulation with the U.S. Trustee, Levene Neale has agreed to reduce its fees by \$2,100.00 [doc. 62].

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve fees of \$2,926.50 and reimbursement of expenses of \$156.75.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Mylene T Nguyen

Represented By  
David S Hagen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Mylene T Nguyen**

**Chapter 7**

**Trustee(s):**

Diane C Weil (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12950 Kimberly Birbrower**

**Chapter 7**

**#3.00** Motion by David Seror, Chapter 7 Trustee, for approval of Trustee's fees and expenses and approval of distribution to creditors

Docket 129

**Tentative Ruling:**

David Seror, chapter 7 trustee – approve fees of \$7,805.00 and reimbursement of expenses of \$13.44.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$15,228.00 and reimbursement of expenses of \$426.22.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Kimberly Birbrower

Represented By  
Tawni Takagi  
David A Tilem

**Trustee(s):**

David Seror (TR)

Represented By  
Jessica L Bagdanov  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12950 Kimberly Birbrower**

**Chapter 7**

**#4.00** First and final application of Brutzkus Gubner attorneys for David Seror, Chapter 7 Trustee for compensation and reimbursement of expenses

Docket 126

**Tentative Ruling:**

See calendar no. 3.

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

**Debtor(s):**

Kimberly Birbrower

Represented By  
Tawni Takagi  
David A Tilem

**Trustee(s):**

David Seror (TR)

Represented By  
Jessica L Bagdanov  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#5.00** Post-confirmation status conference re chapter 11 petition

fr. 1/22/15; 5/7/15; 6/4/15; 6/25/15; 8/6/15; 10/15/15;  
11/12/15; 1/17/16; 3/17/16; 7/21/16; 1/26/17; 6/8/17;  
7/6/2017; 8/10/17; 12/14/17; 12/21/17

Docket 1

**Tentative Ruling:**

Contrary to the Court's ruling from the prior post-confirmation status conference, the reorganized debtor, Peter Brook ("Debtor") did not timely file a post-confirmation status report.

In addition, on December 14, 2017, Debtor filed a motion for an order closing this case on an interim basis (the "Motion to Close Case") [doc. 183]. On April 20, 2018, Debtor filed a declaration that no party requested a hearing on the Motion to Close Case [doc. 191]. However, Debtor has not lodged an order on the Motion to Close Case. If Debtor intends to obtain an order closing this case, Debtor should lodge an order on the Motion to Close Case.

**Party Information**

**Debtor(s):**

Peter Brook

Represented By  
Nam Le

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#6.00** Disclosure statement hearing

fr. 5/10/18

Docket 113

**Tentative Ruling:**

Contrary to the Court's prior ruling, the debtor did not account for his postpetition income taxes in either the *Declaration of Current/Postpetition Income and Expenses* (Disclosure Statement, Exhibit A) or the attached projections (Disclosure Statement, Exhibit G).

The Court will continue this hearing to **1:00 p.m. on July 19, 2018**. No later than **July 5, 2018**, the debtor must supplement the amended disclosure statement with the information above.

Proposed dates and deadlines regarding "Individual Debtor's First Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Individual Debtor's First Amended Disclosure Statement in Support of Plan of Reorganization:"

Hearing on confirmation of the Plan: **August 16, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **June 29, 2018**.

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Herbert Simmons**

**Chapter 11**

ballots to the debtor: **July 27, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **August 6, 2018.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#7.00 Status conference re chapter 11 case**

fr. 9/7/17; 10/5/17; 2/8/18; 3/15/18; 5/10/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on July 19, 2018**, to be held in connection with the hearing on the adequacy of the debtor's amended disclosure statement.

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#8.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The debtor has not filed a monthly operating report for May 2018.

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **August 31, 2018.**

Deadline to mail notice of Bar Date: **June 29, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **October 1, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 11, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Marcelo Martinez**

**Chapter 11**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#9.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **August 31, 2018.**

Deadline to mail notice of Bar Date: **June 29, 2018.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: October 1, 2019.

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 18, 2018.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

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

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

2:00 PM

**1:16-12950 Kimberly Birbrower**

**Chapter 7**

**#10.00 Debtor's motion to dismiss chapter 7 case  
fr. 6/14/18**

Docket 120

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No opposition has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Kimberly Birbrower

Represented By  
Tawni Takagi  
David A Tilem

**Trustee(s):**

David Seror (TR)

Represented By  
Jessica L Bagdanov

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 21, 2018

Hearing Room 301

2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 11

#11.00 Creditor's motion to extend time in which to file complaint under §523 and/or to deny a discharge

Docket 93

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. In her original schedule E/F, Debtor listed a \$331,651.00 debt owed to Schuller & Schuller ("Creditor") for attorney fees. Debtor indicated that the debt is disputed. (Doc. 1, at p. 34.) Debtor alleges that she terminated Creditor's representation on March 12, 2008, nearly 10 years before the petition date. Debtor did not pay any further fees to Creditor after the termination. Debtor disputed the amounts that Creditor billed to her credit card. (Declaration of Deborah Adri, ¶ 2.) In addition, Creditor never served Debtor with a lawsuit regarding the alleged debt. (*Id.*, ¶ 3.)

On March 29, 2018, the first § 341(a) meeting of creditors took place. Prior to the meeting, Creditor made a demand for documents related to Debtor's interest in real property owned directly by Debtor or by any holding entity. On May 3, 2018, a continued § 341(a) meeting was held. Debtor's counsel did not produce the documents requested by Creditor, but instead produced a tax transcript. (Declaration of Shai Oved, ¶ 2.)

On May 4, 2018, Creditor's counsel filed an application for Rule 2004 examination of Debtor (the "2004 Application") [doc. 68]. On May 9, 2018, Debtor objected to the 2004 Application. In her objection, the Debtor agreed to produce certain documents, but disputed the scope and relevance of other document requests.

On May 11, 2018, Debtor filed a motion for a protective order (the "Protective Order Motion") [doc. 76]. On May 13, 2018, Creditor filed a response to the Protective Order Motion [doc. 84]. On June 14, 2018, the Court held a hearing on the Protective

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, June 21, 2018

Hearing Room 301

---

2:00 PM

CONT...

**Deborah Lois Adri**

**Chapter 11**

Order Motion. The Court continued the hearing on the Protective Order Motion to July 19, 2018, to allow the parties to file a stipulation pursuant to Local Bankruptcy Rule 7026-1(c)(3), addressing the disputed document production categories.

On May 24, 2018, Creditor's counsel filed the pending *Motion to Extend Time in Which to File a Complaint Under § 523 and/or to Deny a Discharge* (the "Motion to Extend") [doc. 93]. On June 7, 2018, Debtor filed an opposition [doc. 103]. On June 14, 2018, Creditor filed a reply [doc. 108].

**II. RELEVANT LAW**

Federal Rule of Bankruptcy Procedure ("FRBP") 4004 states, in pertinent part—

- (a) Time for Objecting to Discharge; Notice of Time Fixed. In a chapter 7 case, a complaint, or a motion under §727(a)(8) or (a)(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.
- (b) Extension of Time.
  - (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 extend 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.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**  
Pursuant to FRBP 4007(c):

**Chapter 11**

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.

Generally, a party seeking to extend the time to object to discharge under FRBP 4004(b) and 4007(c) must show special circumstances justifying such extension. *Matter of James*, 187 B.R. 395, 397 (Bankr. N.D. Ga. 1995). "[C]ourts also will look to resultant burden upon the debtor in evaluating such a motion to extend time." *Id.* at 398. "Case law citing Rule 4007(c) indicates that the 'cause' for an extension must be compelling and a creditor must show why it was not able to comply with the deadline as originally set." *In re Garner*, 339 B.R. 610, 611 (Bankr. W.D. Tex. 2006). "[I]f a creditor fails to diligently pursue discovery prior to expiration of the deadline, there is no cause justifying an extension of time to object to discharge." *In re Chatkhan*, 455 B.R. 365, 370 (Bankr. E.D.N.Y. 2011).

### **III. DISCUSSION**

Debtor argues that the Motion to Extend should be denied because merely stating that it has a claim for fraud does not entitle Creditor to an extension of time to object to discharge. In support of her position, Debtor cites *Chatkhan*. In *Chatkhan*, the creditor argued that cause existed for an extension of time to object to discharge, because his claims involve allegations of fraud. The court in *Chatkhan* held that such allegations:

are not cause to grant an extension of time to object to discharge or dischargeability. No argument has been advanced that any alleged fraud or material misrepresentation impeded [creditor] from pursuing his rights, requesting discovery, or filing a complaint to object to discharge or dischargeability.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

*Id.* at 368.

Here, Creditor is not arguing that it is entitled to an extension of time simply because it intends to allege fraud in a nondischargeability complaint. Rather, Creditor seeks an extension of time because the Debtor has allegedly refused to answer Creditor's questions at her § 341(a) meetings, delayed producing documents to Creditor, and filed the Protective Order Motion.

Furthermore, in *Chatkhan*, the creditor argued that he had exercised diligence throughout the case. However, the creditor's only support for his position was that his counsel appeared at the § 341(a) meeting and questioned the debtor. *Id.* at 368. The court found that the creditor did not exercise diligence. The creditor had known about the debtor's case almost five months before the deadline to object to discharge. The creditor obtained counsel, who attended the § 341(a) meeting two months before the deadline. However, the creditor waited until 10 days before the deadline to file a proof of claim, and waited until the day of the deadline to file his extension motion. The creditor sought no discovery before the deadline. *Id.* at 369.

Here, Creditor appears to have been diligent in pursuing relevant information. Debtor filed her case on February 16, 2018. Before the initial § 341(a) meeting, Creditor requested documents from Debtor. Creditor appeared at the initial § 341(a) meeting on March 29, 2018, and at the continued § 341(a) meeting on May 3, 2018. On May 4, 2018, Creditor filed the 2004 Application.

Debtor has agreed to produce certain categories of documents in response to the 2004 Application. The Court has set a continued hearing on July 19, 2018 regarding the Protective Order Motion, to allow the parties additional time to resolve or properly to address their remaining disputes as to the scope of Creditor's proposed 2004 examination. In light of the circumstances, it appears that there is cause to grant an extension of time pursuant to FRBP 4004(b) regarding any claims under § 727.

However, there does not appear to be cause for an extension of time pursuant to FRBP 4007(c) for claims under 11 U.S.C. § 523. As Debtor alleges, Creditor's representation was terminated on March 12, 2008, nearly 10 years before the petition date.

Creditor has not addressed the issue of whether its putative claims under § 523 are

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, June 21, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

time-barred. Nor has Creditor identified which of its document requests in the 2004 Application are relevant to any such claims. Consequently, the Court will deny Creditor's request for an extension of time to file a complaint as concerns § 523 claims.

**IV. CONCLUSION**

In light of the foregoing, the Court will grant in part and deny in part the Motion to Extend. Creditor's deadline to file a complaint under 11 U.S.C. § 727 is extended to August 20, 2018. The Court will deny Creditor's request for extension of time to file a complaint under 11 U.S.C. § 523.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, June 26, 2018**

**Hearing Room 301**

9:30 AM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#1.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17; 1/24/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 6/14/18 Continuing trial to  
9/26/18 and 9/27/18 at 9:30 AM**

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**Defendant(s):**

HELY NORRIS

Pro Se

NOOR NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, June 27, 2018

Hearing Room 301

9:30 AM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#1.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17; 1/24/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 6/14/18 Continuing trial to  
9/26/18 and 9/27/18 at 9:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 27, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT...**

**NOOR NORRIS**

Brad S Sures

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 27, 2018**

**Hearing Room 301**

1:30 PM

**1:11-11603 Kevan Harry Gilman**

**Chapter 7**

**#0.00 Status conference re: remand**

from: 6/13/18

Docket 577

**Tentative Ruling:**

On June 20, 2018, Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Creditors") filed a discovery plan (the "Discovery Plan") [doc. 599]. In the Discovery Plan, Creditors outline several claims and defenses they intend to litigate on remand, including whether the debtor "had a cognizable possessory interest" in the subject property and whether "[t]hat interest entered the bankruptcy estate." Discovery Plan, p. 2. However, the Ninth Circuit Court of Appeals already determined that "California law rejects [Creditors'] argument that title to the property is necessary to claim a homestead exemption." *Gilman*, 887 F.3d 956, 965 (9th Cir. 2018); *see also Tarlesson v. Broadway Foreclosure Investments, LLC*, 184 Cal.App.4th 931, 937 (Ct. App. 2010) ("[J]udgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another."). In light of the Court of Appeals' decision, the only issues remaining for adjudication on remand are: (A) whether the debtor intended to reside at the subject property; and (B) whether any California equitable law could be used to deny the debtor's exemption. *Id.*, at 966. As a result, the Court will entertain arguments only about these narrow issues. Any attempt by a party to relitigate issues that have already been decided by the Court of Appeals may subject that party to sanctions in accordance with Federal Rule of Bankruptcy Procedure 9011.

In addition, Creditors assert that the debtor is not entitled to assert the attorney-client privilege or the work product doctrine if Creditors choose to depose the debtor's former counsel, Shirlee Bliss. It appears Creditors are suggesting that the debtor has lost these privileges because Ms. Bliss is the debtor's *former* counsel. Discovery Plan,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 27, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

p. 5. However, the authorities on which Creditors rely do not stand for the proposition that parties lose the right to assert either privilege because an attorney no longer represents the party. Rather, the cases set forth a three part test to determine if an attorney, current or former, may be deposed:

1. No other means exists to obtain the information than to depose opposing counsel;
2. The information sought is relevant and nonprivileged; and
3. The information is crucial to preparation of the case.

*Pamida, Inc. v. E.S. Originals, Inc.*, 281 F.3d 726, 729 (8th Cir. 2002) (citing *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)). Moreover, *Pamida* did not suggest that the termination of an attorney's representation eliminates a party's right to assert a privilege; instead, the *Pamida* court found that the three-prong test above was satisfied *and* the litigation about which the opposing counsel sought information had concluded. *Id.*, at 730-31. Here, the litigation about which Creditors seek to depose Ms. Bliss has not concluded. Additionally, it is unclear why Ms. Bliss would have information relevant to the debtor's intent to stay, or any other relevant information regarding the debtor's entitlement to a homestead exemption, which Creditors could not obtain elsewhere.

Creditors also argue that the crime-fraud exception bars the debtor from asserting the attorney-client privilege. Discovery Plan, p. 5. "To invoke the crime-fraud exception successfully, the [movant] 'has the burden of making a prima facie showing that the communications were in furtherance of an intended or present illegality... and that there is some relationship between the communications and the illegality.'" *In re Grand Jury Proceedings*, 87 F.3d 377, 380 (9th Cir. 1996) (quoting *U.S. v. Laurins*, 857 F.2d 529, 540 (9th Cir. 1988)). Creditors suggest that the debtor's omission of the escrow agreement from his bankruptcy schedules is a "crime" under 18 U.S.C. § 152. Under 18 U.S.C. § 152(2), "[a] person who... knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11... shall be fined

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, June 27, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

under this title, imprisoned not more than 5 years, or both."

Notwithstanding the fact that the debtor has never been accused, charged or convicted of "knowingly and fraudulently" making a false oath under 18 U.S.C. § 152(2), the debtor's omission of the escrow agreement does not call for the application of the crime-fraud exception. Among other things, the Court of Appeals already found that the fact that the subject property was in escrow does not prevent the debtor from claiming a homestead exemption under California law. *Gilman*, 887 F.3d at 965. As such, depending on the discovery Creditors intend to request from Ms. Bliss, it is unlikely that the crime-fraud exception will apply to nullify the debtor's assertion of the attorney-client privilege.

The Court will set a discovery cutoff deadline of **September 14, 2018**. Regarding a privilege log, after discovery has been propounded, if the parties cannot agree on a deadline for the debtor to submit a privilege log, or any other issues concerning a privilege log, the parties may submit briefing in support of their respective positions.

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

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 5, 2018

Hearing Room 301

1:00 PM

1:17-11965 Carmit Benbaruh

Chapter 13

#1.00 Order to show cause (1) requiring William Hill, aka Bill Hill, to personally appear and explain his connection to this case; (2) Why William Hill, aka Bill Hill, should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110; (3) Requiring Burce Rorty to personally appear and explain by whome he was hired to appear in this case and what fees, if any, he received; and (4) Requiring Carmit Benbaruh to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss a continued hearing date for the evidentiary hearing and a post-hearing briefing schedule.

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#2.00** Motion for reconsideration to vacate order disgorging compensation  
fr. 4/5/18; 5/15/18; 6/8/18

Docket 66

**Tentative Ruling:**

See calendar no. 1.

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#3.00** Order that William Hill, aka Bill Hill, personally appear and show cause, if any, as to why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110

fr. 5/15/18; 6/8/18

Docket 45

**Tentative Ruling:**

See calendar no. 1.

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#4.00** Status conference re: Leslie Richards' motion for reconsideration  
to vacate order for sanctions/disgorgement

fr.4/5/18; 5/15/18; 6/8/18

Docket 30

**Tentative Ruling:**

See calendar no. 1.

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13183 Mary F Kimbell**

**Chapter 13**

- #5.00** Order to show cause  
(1) Requiring William Hill, aka Bill Hill, to personally appear and explain his connection to the case  
(2) Requiring William Hill, aka Bill Hill to explain why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. § 1101  
(3) Requiring Mary F. Kimbell to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18

Docket 23

**Tentative Ruling:**

See calendar no. 1.

**Party Information**

**Debtor(s):**

Mary F Kimbell

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#6.00** U.S. Trustee motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 15

**Tentative Ruling:**

The Court may continue this hearing, so the debtor may address why the Court should not appoint a chapter 11 trustee in this case.

The debtor will need to discuss whether it is prepared to, and will, treat its former and current dancers as employees, in accordance with the state court's decision.

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

Docket 0

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **October 1, 2018.**

Deadline to mail notice of Bar Date: **July 31, 2018.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **November 16, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on December 6, 2018.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

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

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Victory Entertainment Inc**

Russell Clementson

**Chapter 11**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

1:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#7.10** Post-confirmation status conference re chapter 11 petition

fr. 1/22/15; 5/7/15; 6/4/15; 6/25/15; 8/6/15; 10/15/15;  
11/12/15; 1/17/16; 3/17/16; 7/21/16; 1/26/17; 6/8/17;  
7/6/2017; 8/10/17; 12/14/17; 12/21/17; 6/21/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order closing case on interim basis entered  
6/25/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Peter Brook

Represented By  
Nam Le

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11495 Steven Nia**

**Chapter 7**

**#8.00** Motion to withdraw as counsel for debtor

Docket 149

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#9.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Approving payment of commissions; (4) Finding purchaser is a good faith purchaser; (5) Waiving Stay under Rule 6004(H); and (6) Directing turnover of real property

fr. 6/7/18

Docket 228

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On October 11, 2017, Mehri Akhlaghpour ("Debtor") filed a voluntary chapter 11 petition. On February 1, 2018, the Court issued an order directing the appointment of a chapter 11 trustee [doc. 101]. On February 6, 2018, Nancy J. Zamora was appointed the chapter 11 trustee (the "Trustee") [doc. 107].

In her schedule A/B [doc. 59], Debtor listed an ownership interest in six real properties in the following locations: (A) 4450 Winnetka Avenue, Woodland Hills, CA 91364 (the "Winnetka Property"); (B) 17315 Cagney Street, Granada Hills, CA 91344 (the "Cagney Property"); (C) 5454 Zelzah Avenue, Apt. 302, Encino, CA 91316 (the "Zelzah Property"); (D) 26943 Hillsborough Parkway, Unit 27, Valencia, CA 91354 (the "Hillsborough Property"); (E) 16320 Gledhill Street, North Hills, CA 91343 (the "Gledhill Property"); and (F) 8338 Woodley Place, Unit 28, North Hills, CA 91343 (the "Woodley Property"). Debtor also listed a 100% interest in eight business entities and a 32 % interest in another business entity, as well as three claims against third parties.

On February 7, 2018, the Trustee filed an application to employ Rodeo Realty, Inc. (the "Broker") as a real estate broker [doc. 110]. On March 15, 2018, the Court entered an order approving the application to employ the Broker [doc. 135].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

On March 16, 2018, the Trustee filed motions to sell the Hillsborough Property [doc. 145] and the Woodley Property [doc. 146]. On March 22, 2018, the Trustee filed a motion to sell the Zelzah Property [doc. 155]. On April 12, 2018, the Trustee filed motions to sell the Cagney Property [doc. 175] and the Gledhill Property [doc. 178].

On April 17, 2018, the Court entered orders approving the sales of the Hillsborough Property [doc. 192] and the Woodley Property [doc. 193]. On April 24, 2018, the Court entered an order approving the sale of the Zelzah Property [doc. 205]. On May 15, 2018, the Court entered orders approving the sales of the Gledhill Property [doc. 225] and the Cagney Property [doc. 226].

On May 17, 2018, the Trustee filed a motion to sell the Winnetka Property (the "Motion") [doc. 228] to Kamran Taleby (the "Purchaser") for \$1,225,000.00. On the same day, Debtor filed a proposed chapter 11 plan [doc. 236] and related disclosure statement [doc. 237].

On May 24, 2018, Wilmington Savings Fund Society, FSB ("Wilmington") filed a conditional opposition to the Motion [doc. 242], stating that it does not oppose the sale as long as it is paid in full. On June 21, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 257], asserting that: (A) the Trustee does not have a good business reason to sell substantially all of the estate's assets; (B) the Trustee did not adequately market the Winnetka Property; (C) the sale will interfere with Debtor's proposed chapter 11 plan; (D) the Trustee did not consider at least one offer from a purchaser named Armen Ohanian; (E) the sale is an inappropriate *sub rosa* plan; (F) the sale interferes with Debtor's and others' due process rights.

On June 28, 2018, the Trustee filed a reply to the Opposition (the "Reply") [doc. 258], wherein the Trustee agreed to the terms set forth by Wilmington. As for the Opposition, the Trustee asserts, among other things, that the sale is not for substantially all of the estate's assets and, even if it were, the Trustee has provided several good business reasons to move forward with the sale. The Trustee also argues that the purchase price reflects the best offer for the Winnetka Property, and the Broker did attempt to contact Mr. Ohanian but did not receive a response from Mr. Ohanian regarding overbidding on the Winnetka Property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 5, 2018

Hearing Room 301

2:00 PM

CONT... Mehri Akhlaghpour  
II. ANALYSIS

Chapter 11

***A. General Sale Standard***

Pursuant to 11 U.S.C. § 363(b)(1), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" subject to an exception that does not apply here. A trustee has broad authority to negotiate sales of estate property under 11 U.S.C. § 363(b)(1); *see also In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). In reviewing motions to sell property under § 363(b), a court must determine whether sound business reasons support the sale outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

***B. Good Business Reason Justifying Sale***

Debtor objects to the sales of the Winnetka Property on the grounds that the Motion proposes to sell substantially all of the estate's assets, and that the Trustee has not supported her decision with a good business justification. In support of her argument, Debtor references *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983). In *Lionel*, the Second Circuit Court of Appeals outlined six factors for determining whether a good business reason exists justifying a sale of substantially all of the assets of the debtor:

[Courts should] look to such relevant factors as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

*Lionel*, 722 F.2d at 1071.

First, *Lionel* is distinguishable because the debtor in *Lionel* sought authority to sell substantially all of the estate's assets. In the Opposition, Debtor asserts that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 5, 2018

Hearing Room 301

2:00 PM

CONT... Mehri Akhlaghpour

Chapter 11

Winnetka Property is equivalent to 37% of the estate's overall value. Debtor calculates this number by dividing the sale price of the Winnetka Property by the aggregate value of all of the estate's real properties. However, the six real properties are not the only assets of this estate. In her calculation, Debtor omits the estate's 100% interest in eight business entities and a 32% interest in another business entity. Debtor also omits her interest in three claims against third parties. As such, even accounting for the Trustee's prior sales of the other real properties, the subject sale will not result in the sale of substantially all of the estate's property.

Even if *Lionel* is applicable, however, the Trustee has provided a "good business reason" justifying the sale of the Winnetka Property. Specifically, the Trustee has articulated a number of reasons for the sale, including that: (1) the completion of the sale is a necessary step towards, and for the Trustee to determine the feasibility of, a chapter 11 liquidating plan; (2) the purchase price for the Winnetka Property is fair and reasonable because it constitutes the highest offer amount received by the Trustee thus far after extensive marketing efforts by the Broker; and (3) the purchase price will be further "market tested" by potential overbidding at the hearing on the Motion. In addition, Debtor filed her chapter 11 petition nearly nine months ago. As such the Motion is not premature.

Debtor asserts that the purchase price is too low based on two appraisals obtained by Debtor, which reflect a market value of \$1,466,800 as of May 24, 2018 and \$1,305,000 as of March 30, 2017. Notwithstanding the issues presented by the Trustee regarding the lack of adequate comparable properties in the appraisals, the appraisals set forth a value based on several assumed factors. In contrast, the \$1,225,000 purchase price to which the Trustee and the Purchaser agreed reflects the result of *actual* marketing efforts. Debtor has not demonstrated that continued marketing of the Property or different methods of marketing the Winnetka Property would lead to a higher purchase price. Given that the marketing of the Winnetka Property has generated multiple interested buyers, it appears that the sale prices reflect the market, and that the Winnetka Property has been marketed for enough time to generate competitive interest. The sale also is subject to overbid; should there be any interested purchasers willing to pay over \$1,255,000, they will have the opportunity to do so pursuant to the overbid procedures outlined in the Motion.

Moreover, approval of this sale will not have an effect on a proposed disposition on future plans of reorganization. First, the Trustee does not intend to immediately

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 5, 2018

Hearing Room 301

---

2:00 PM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

distribute the sale proceeds. Further, the Winnetka Property does not generate rents for Debtor to use to fund a plan, nor does Debtor's proposed plan depend on a future sale of the Winnetka Property. In addition, the Court will not approve Debtor's disclosure statement at this time (as set forth in the ruling on that matter), and the Court will not indefinitely stay administration of this estate until Debtor provides a disclosure statement containing adequate information. As noted in the ruling on the disclosure statement, Debtor's proposed chapter 11 plan depends in large part on purported settlement agreements with certain unsecured creditors, which Debtor mentions in the Opposition as well. The Court has no admissible evidence regarding the nature of these agreements, such as the source of the funds used to purportedly settle with creditors and whether the estate has been released of any and all liability. Without additional information, the Court cannot approve Debtor's disclosure statement, and cannot find that the "likelihood of confirmation is high." Opposition, p. 6.

***C. The Trustee's Business Judgment***

As outlined by the Bankruptcy Appellate Panel of the Ninth Circuit:

The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances. The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's.

*In re Lahijani*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

Debtor questions the Trustee's business judgment based on Debtor's assertion that the Trustee did not consider an offer by a potential buyer, Armen Ohanian. However, Debtor's assertion is belied by the evidence provided by the Trustee in the Reply, which demonstrates that the Broker contacted Mr. Ohanian on two separate occasions to inquire about an overbid but did not receive a response. Reply, Declaration of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Behnaz Tavakoli, ¶¶ 7-8, Exhibit 1.

In addition, as noted previously by the Court, the Trustee has been a chapter 7 trustee since 1998 and also has been a chapter 11 trustee in cases involving real estate. In those capacities, the Trustee has operated rental properties and sold over one hundred properties. Declaration of Nancy J. Zamora [doc. 228], ¶ 2. Based on the Trustee's record of experience, she may properly be afforded business judgment deference.

***D. Sub-Rosa Plan***

Debtor also argues that the sale of the Winnetka Property constitutes an impermissible "sub-rosa" plan. However, the proposed sale does not take the place of a plan. After paying the allowed claims of creditors secured by the Winnetka Property, the Trustee is not proposing to distribute net proceeds to other creditors at this time. *See In re Air Beds, Inc.* 92 B.R. 419 (B.A.P 9th Cir. 1988).

In addition, Debtor does not argue that the sale runs afoul of the chapter 11 requirements for confirmation of a plan. Debtor only argues that Debtor may not receive a discharge if the Court confirms a liquidating plan. 11 U.S.C. § 1141(d)(3). However, not all liquidating plans remove the possibility of discharge for a debtor. Pursuant to 11 U.S.C. § 1141(d)(3), a debtor does not receive a discharge if the plan provides for liquidation of all or substantially all of the property of the estate *and* "the debtor does not engage in business after consummation of the plan" *and* "the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title." 11 U.S.C. § 1141(d)(3)(A)-(C). Debtor has not articulated why all of these elements would be met if the Trustee were to propose a liquidating plan. In any case, Debtor may raise this argument in opposition to a future plan proposed by the Trustee; an opposition on this basis is not sufficient justification to deny the Motion.

***E. Due Process Considerations***

Debtor also asserts that the Motion should be denied because § 363 sales are an inappropriate violation of the due process rights of Debtor and creditors to the estate. However, Debtor and the estate's creditors have been served with notice of the sale, and have had an opportunity to object. Furthermore, the Trustee has demonstrated that the sale of the Winnetka Property will generate funds with which she can make



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

distributions to creditors. Finally, pursuant to the overbid procedures built into the sale terms, Debtor and any other interested party has the opportunity to bid on the Winnetka Property. Consequently, Debtor has not demonstrated that the sale will violate Debtor's or other parties' due process rights, and there is no binding authority that stands for Debtor's broad and general proposition that sales under 11 U.S.C. § 363 violate a debtor's or creditors' due process rights.

**III. CONCLUSION**

The Court will grant the Motion and approve the sale of the Winnetka Property.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#10.00** Disclosure statement describing chapter 11 plan of reorganization

Docket 235

**Tentative Ruling:**

In her reply [doc. 259], the debtor has agreed to amend the disclosure statement to make the following changes: (A) clarify that the debtor intends to object to certain proofs of claim; (B) accurately set forth whether each class is impaired or unimpaired; (C) clarify that unsecured creditors will be paid quarterly; (D) further divide the classes of unsecured creditors; (E) include the correct interest rate of 5.99% with respect to treatment of Class 13; (F) reference the stipulated judgment with Emymac, Inc.; (G) incorporate information regarding the cash on hand in the estate; (H) include additional risk factors; (I) include a discussion of the absolute priority rule; and (J) clarify that certain holders of unsecured claims will not receive distribution through the plan because they were scheduled as contingent, unliquidated and/or disputed and did not timely file proofs of claim.

In addition, the debtor represents that she will amend the disclosure statement to describe the alleged settlement agreements with certain claimholders. The debtor also must clarify the source of the funding for each of the agreements and whether the estate remains liable to any party on account of the claims purportedly settled. The debtor should attach the written agreements to any amended disclosure statement.

To the extent that any settlement payments are to be made from estate assets, the debtor must obtain court approval of the settlement agreements, either prior to, or in connection with, plan confirmation.

The debtor indicates in the disclosure statement that her family may contribute to the plan if she is unable to make plan payments. However, the debtor has not submitted any declarations by family members in which the relevant family member agrees to make such payments and provides sufficient evidence of his or her ability to do so. Regarding the ability of a family member to make plan payment contributions, with the amended disclosure statement, the debtor must provide documentary evidence to demonstrate the ability of a family member to make plan payment contributions.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

In her projection of monthly income attached to the disclosure statement, the debtor includes rental income. Regarding real properties that are the subject of entered sale orders, the debtor must provide amended projections which omit that rental income and the related real property expenses.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#11.00** Status conference re chapter 11 case  
fr. 12/7/17; 12/21/17; 5/17/18; 6/7/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.**

**Chapter 7**

**#12.00** Chapter 7 Trustee's motion for order authorizing sale of estate assets to R.L. Spear Co., Inc.

Docket 41

**Tentative Ruling:**

The proof of service attached to the notice of the motion [doc. 42] does not reflect service of the notice on all creditors. On June 13, 2018, the chapter 7 trustee filed a Notice of Errata [doc. 45], indicating that the chapter 7 trustee inadvertently did not attach a mailing list to the proof of service of the notice of this hearing. However, the Notice of Errata also does not include an attached mailing list demonstrating that all creditors were timely served with notice of this hearing.

**Party Information**

**Debtor(s):**

Porter Ranch Integrative Medical

Represented By  
Michael D Luppi

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Noreen A Madoyan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#13.00** Motion for order authorizing use of cash collateral

Docket 26

**Tentative Ruling:**

The debtor did not properly serve the motion on either Bank of America, N.A. ("BOA") or Real Time Resolutions, Inc. ("Real Time"). With respect to BOA, the debtor indicated that she served BOA at the Tryon Street address, but the address in the proof of service does not include the correct zip code for that address. The zip code of BOA's headquarters is "28202," not "28255." Moreover, the Tryon Street address is not the address for the agent for service of process. That address is listed on the California Secretary of State's website as "Vivian Imperial, 818 W. Seventh St., Ste 930, Los Angeles, CA 90017." The Tryon Street address is the address for BOA's headquarters, at which address the debtor should serve any notice "c/o" an officer or director of BOA.

As for Real Time, the debtor served Real Time's agent for service of process at Real Time's headquarters. Once again, the debtor must serve Real Time at its headquarters by addressing the mailing "c/o" an officer or director of BOA. The debtor did not serve Real Time's agent for service of process at the correct address, which, according to the California Secretary of State's website, is: "Vivian Imperial, 818 W. Seventh St., Ste 930, Los Angeles, CA 90017."

Moreover, the debtor did not file form F 4001-2.STMT.FINANCE, located on the Court's website, as required by Local Bankruptcy Rule 4001-2(a).

In addition to these issues, the debtor did not account for payments to Real Time in her monthly budget. Does the debtor use the income generated by the subject real property to make payments to Real Time? Moreover, the debtor did not include a deed of trust in favor of BOA. As such, it is unclear if BOA has an interest in the rents generated by the subject property.

In light of these issues, the Court will not grant this motion at this time. If the debtor files and serves an amended notice of motion and motion for an order authorizing the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Rowena Benito Macedo Chapter 11**

use of cash collateral and cures the deficiencies above by **July 12, 2018**, the Court will hold a hearing on the amended motion at **2:00 p.m. on August 2, 2018**.

Appearances are excused on July 5, 2018.

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

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 5, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10694 Charles Hung Ngo**

**Chapter 7**

**#14.00 Debtor's Notice Of Motion And Motion to Dismiss Chapter 7**

Docket 12

**\*\*\* VACATED \*\*\* REASON: Hearing set in error.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Charles Hung Ngo

Represented By  
Thomas K Emmitt

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

10:30 AM

**1:17-13039 Benjawan Rachapaetayakom**

**Chapter 13**

**#48.00 Debtor's motion to avoid junior lien on principal residence**

Docket 50

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Benjawan Rachapaetayakom

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10798 Narkell Hobbs-James**

**Chapter 13**

**#49.00 Debtor's motion for for order determining value of collateral**

Docket 26

**Tentative Ruling:**

Grant relief to bifurcate lienholder's claim subject to completion of chapter 13 plan. The claim of this senior lienholder, Exeter Finance LLC, in the amount of \$9,875.00 is to be treated as a secured claim and the balance to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Narkell Hobbs-James

Represented By  
Devin Sawdayi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10983 Daniele C Kenney**

**Chapter 13**

**#50.00** Motion for setting property value and to avoid junior lien  
on principal residence

fr. 6/12/18

Docket 13

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Daniele C Kenney

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16988 Jerome Tyler and Maryann Tyler**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 186

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jerome Tyler

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Maryann Tyler

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11542 Andrea Nicole Williams-Hart**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 135

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Andrea Nicole Williams-Hart

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18; 3/13/18; 5/8/18

Docket 68

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12781 Florencio Santana, Jr. and Betty Lena Santana**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 86

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Florencio Santana Jr.

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Betty Lena Santana

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13042 Ericka Evalinda Mitchell**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18; 6/12/18

Docket 56

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ericka Evalinda Mitchell

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13109 Artashes Yenokyan**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Artashes Yenokyan

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/ 8/18

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11099 Lilia Piedad Moncada**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 28

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Lilia Piedad Moncada

Represented By  
Leon D Bayer  
Jeffrey N Wishman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11833 Irma Gloria Rivera**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Irma Gloria Rivera

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12523 Brent Carpenter**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 6/13/17; 8/8/17; 10/3/17; 12/12/17; 3/13/18; 5/8/18

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brent Carpenter

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10038 Oganesh Pashayan and Anahit Pashayan**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18; 6/12/18

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oganesh Pashayan

Represented By  
Abraham Dervishian

**Joint Debtor(s):**

Anahit Pashayan

Represented By  
Abraham Dervishian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10083 Javier Magana and Jacqueline E. Magana**

**Chapter 13**

**#63.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 56

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Javier Magana

Represented By  
Andrew Moher

**Joint Debtor(s):**

Jacqueline E. Magana

Represented By  
Andrew Moher

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10475 Princess Fletcher**

**Chapter 13**

**#64.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/8/18

Docket 63

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Princess Fletcher

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10710 Nick A Avedissian and Hripsime Avedissian**

**Chapter 13**

**#65.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18

Docket 31

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Nick A Avedissian

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Hripsime Avedissian

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#66.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 5/8/18

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10566 Susan Ann Woodson**

**Chapter 13**

**#67.00** Trustee's Objection to Homestead Exemption

Docket 16

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 6/13/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Susan Ann Woodson

Represented By  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12762 Michael Lewis Smith**

**Chapter 13**

**#67.10** Trustee's motion to dismiss case for failure to make plan payments

Docket 44

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Michael Lewis Smith

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:12-17172 Bibliana Lucia Boveri**

**Chapter 13**

**#68.00** Motion re: objection to the response to notice of final cure payment filed by U.S. Bank Trust National Association

Docket 107

**Tentative Ruling:**

Overrule in part and sustain in part.

**I. BACKGROUND**

On August 9, 2012, Bibliana Lucia Boveri ("Debtor") filed a chapter 13 petition.

On December 26, 2012, Christiana Trust filed a proof of claim, asserting a secured claim against Debtor's residence. On January 25, 2013, Creditor filed a Notice of Payment Change, adjusting the escrow account payments to \$283.32 per month and thereby increasing Debtor's total monthly payment to \$2,314.96. Debtor did not object to the Notice of Payment Change.

On February 13, 2015, Christiana Trust filed a motion for relief from the automatic stay (the "Motion for Relief from Stay") [doc. 56]. Christiana Trust withdrew the Motion for Relief from Stay prior to the hearing on the Motion for Relief from Stay.

On August 16, 2015, Christiana Trust transferred the debt to U.S. Bank, National Association ("Creditor"). Subsequently, Creditor's counsel contacted Debtor's counsel regarding the Motion for Relief from Stay. Opposition, Ex. B. In relevant part, the parties discussed missing mortgage payments between January 2015 and June 2015. *Id.* In a November 7, 2017 email to Creditor, Debtor's counsel noted that Debtor's March 2015 through June 2015 mortgage payments had not been tendered. *Id.*

On April 18, 2018, the chapter 13 trustee filed a Notice of Final Cure Payment [doc. 100]. On May 9, 2018, Creditor filed a response to the Notice of Final Cure Payment (the "Response"), attaching a ledger and asserting that Debtor owes \$33,987.06 in postpetition mortgage payments and \$5,356.61 in fees, charges, expenses, escrow and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Bibliana Lucia Bovery**

**Chapter 13**

costs. With respect to the \$5,356.61 in fees, charges, expenses, escrow and costs, the attached ledger reflected that \$5,236.61 of this amount was Debtor's escrow account balance and the remaining \$120 was attributed to late charge penalties against Debtor.

On May 30, 2018, Debtor filed an objection to the Response (the "Objection") [doc. 107], arguing that Creditor did not credit Debtor for four mortgage payments between March 2015 and June 2015, that Debtor overpaid her mortgage by a total of \$4,927.18, which Creditor did not apply and that Creditor did not properly notice or itemize the additional requested fees and charges of \$5,356.61. On June 26, 2018, Creditor filed an opposition to the Objection (the "Opposition") [doc. 110], referring the Court to the emails wherein Debtor's counsel informed Creditor that Debtor had not tendered payments between March 2015 and June 2015. In the Opposition, Creditor also asserts that the Notice of Payment Change appropriately noticed Debtor regarding the escrow account adjustment, but agreed to remove the \$120 late charge. On July 3, 2018, Debtor filed a reply to the Response (the "Reply") [doc. 111], arguing that Creditor should be estopped from collecting the escrow balance because Creditor did not enforce the increased monthly payments after the Notice of Payment Change and that Creditor inappropriately collected overpayments prior to the Notice of Payment Change.

## **II. ANALYSIS**

Debtor disputes the Response for three reasons: (A) Debtor asserts that Creditor did not credit Debtor for four payments of \$1,888.17 between March and June 2015; (B) that Debtor overpaid her mortgage by a total of \$4,927.18, which Creditor did not apply; and (C) that Creditor did not provide sufficient notice of the \$5,356.61 in postpetition mortgage expenses.

Regarding the \$1,888.17 mortgage payments between March 2015 and June 2015, Debtor provided Debtor's bank statements from March through June 2015 [Exh 2]. Bank statements for each month indicate a withdrawal of \$1,888.17. However, the statements do not indicate where the money was sent. Furthermore, in 2017 (after Debtor asserts she paid Creditor), Debtor's counsel stated in an email that "the mortgage payments [counsel] was holding for the months of March-June, 2015 were never tendered...[debtor] will have to make up for those four mortgage payments." There is no evidence that Debtor made these payments after these email exchanges.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Bibliana Lucia Boverly**

**Chapter 13**

Creditor's ledger, attached to the Response, reflects that Debtor satisfied her mortgage payments of \$1,888.17 through November 2016. Debtor remains delinquent for the months between December 2016 and May 2018, a total of 18 months. As such, Creditor's accounting, which reflects a total of \$33,987.06 in postpetition payments that are due, is accurate ( $18 * \$1,888.17 = \$33,987.06$ ).

Debtor next asserts that, between August 2012 and June 2014, Debtor overpaid her mortgage by a total of \$4,927.18. However, on January 25, 2013, Creditor filed the Notice of Payment Change, to which Debtor did not object. The Notice of Payment Change reflects that the only change made by the increase is that Debtor would now make an additional \$283.32 in monthly payments to be applied to Debtor's escrow balance. In the Notice of Payment Change, Creditor noted that Debtor's monthly principal and interest payments would not change. The ledger attached to the Response also shows that Creditor kept separate columns for payments applied to Debtor's principal and interest and payments applied to Debtor's escrow balance.

In the Reply, Debtor states that Creditor did not actively attempt to enforce the payment change throughout Debtor's bankruptcy case and, as a result, should be estopped from collecting any delinquent escrow payments. Debtor does not cite any authority for this proposition. Moreover, Debtor does not assert that she did not receive notice of the Notice of Payment Change when it was filed in 2013. Pursuant to FRBP 3002.1(b)—

- (1) The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.
- (2) A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Bibliana Lucia Boveri**

**Chapter 13**

Here, Debtor did not timely object to the Notice of Payment Change. As such, the payment change went into effect 21 days after Creditor filed the Notice of Payment Change. In addition, to the extent Debtor is arguing that Creditor is estopped from collecting the amount set forth in the Notice of Payment Change because of Creditor's representations in the Motion for Relief from Stay, this Court never ruled on the Motion for Relief from Stay because Creditor withdrew the Motion for Relief from Stay prior to the hearing. Debtor has not articulated why a matter never adjudicated by a court would serve to estop a party in the future.

Debtor also argues that any overpayments prior to the Notice of Payment Change, specifically for the months between September 2012 and February 2013, should be credited to Debtor's account. However, it appears these overpayments went into a suspense account, which, beginning in February 1, 2014, were applied to reduce Debtor's escrow account balance. In other words, it does not appear Creditor improperly adjusted Debtor's escrow payments prior to the Notice of Payment Change. Rather, Debtor overpaid her escrow and Creditor deposited the amounts to a suspense account, later applying the amounts to Debtor's escrow balance (one year after the Notice of Payment Change alerted Debtor to the escrow adjustment).

As to the \$5,356.61 in fees, charges, escrow and costs, Debtor claims that Creditor failed to describe and itemize these charges. However, the ledger attached to the Response clearly shows that \$5,236.61 of the charges is the escrow balance and the remaining \$120 is from late charges. As discussed above, Creditor provided appropriate notice of the escrow-account adjustment in accordance with FRBP 3002.1(b), and Debtor did not object. Creditor agrees that it did not provide adequate notice of the \$120 and will amend the Response to reduce the \$5,356.61 to \$5,236.61. Aside from removing the \$120 charge, the remaining delinquencies, fees and costs outlined in the Response appear to be accurate.

### **III. CONCLUSION**

The Court will sustain the Objection as to the \$120 late charge fee. The Court will otherwise overrule the Objection.

Creditor must submit an order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Bibliana Lucia Boveri**

**Chapter 13**

**Debtor(s):**

Bibiana Lucia Boveri

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:15-10931 James Tomas and Imelda Tomas**

**Chapter 13**

**#69.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 56

**Tentative Ruling:**

Contrary to the Court's order entered on June 14, 2018, the debtors did not file a response to the chapter 13 trustee's objection before July 3, 2018. If the debtors do not appear at the hearing and satisfactorily address the chapter 13 trustee's objection, the Court will deny the motion.

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

**Debtor(s):**

James Tomas

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Imelda Tomas

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:17-13413 Mark Efrem Rosenberg**

**Chapter 13**

**#70.00** Motion re: objection of debtor to claim number 5 by claimant Gabor Szabo, on the grounds that Szabo's claim is late, not secured, and lacks any evidence in support of the claim

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mark Efrem Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10982 Gabriel Medina**

**Chapter 13**

**#71.00** Motion re: objection to claim number 2 by Claimant MH Capitol Ventures, Inc..

Docket 29

**Tentative Ruling:**

Grant; sustain objection to claim 2-1 on the Court's claim register.

**I. BACKGROUND**

On April 19, 2018, Gabriel Medina (the "Debtor") filed a voluntary chapter 13 petition. The Debtor owns the real property located at 15143 Polk Street, Sylmar, CA 91342 (the "Property"). The Debtor's counsel alleges that as of September 2009, Bank of America was the beneficiary of the first deed of trust encumbering the Property, in the principal amount of \$480,000. (Declaration of Anthony O. Egbase, ¶ 2.)

The Debtor denies involvement with the following deeds of trust recorded against the Property between 2009 and 2013:

- Deed of trust held by Lowy Mortimer J. Trust, recorded September 17, 2009;
- Deed of trust held by David Kopatz, recorded January 26, 2012;
- Deed of trust held by Wilshire Financial Partners, recorded January 26, 2012;
- Deed of trust held by JMJ Funding Group, recorded May 28, 2013; and
- Deed of trust held by MH Capital Ventures, Inc. ("Claimant"), recorded June 5, 2013.

The Debtor alleges that he does not have personal liability for any of the above deeds of trust. He further alleges that he did not have title to his Property at the time each of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

these deeds of trust were executed. (Declaration of Gabriel Medina, ¶¶ 2–6.)

On May 3, 2013, Edge Holdings Company LLC ("Edge") executed a deed of trust as to the Property as a borrower, with Strunzo Development Corporation as the beneficiary, in the principal amount of \$165,000 (the "Edge Deed of Trust"). (Doc. 29, Exh. C.) The Edge Deed of Trust was signed by Herrera, as manager for Edge. On May 28, 2013, the Edge Deed of Trust was recorded.

On May 22, 2013, a Short Form Deed of Trust and Assignment of Rents was executed, with Edge as the borrower and Claimant as the beneficiary, in the principal amount of \$47,907.34 ("Claimant's Deed of Trust"). Herrera signed Claimant's Deed of Trust on behalf of Edge. On June 5, 2013, Claimant's Deed of Trust was recorded.

On October 5, 2016, the state court entered judgement (the "Judgment") in favor of the Debtor and against numerous defendants, including Herrera and Edge. The state court ordered that any deeds executed or recorded by Herrera, Edge, and the other defendants in the action were voided and canceled. Furthermore, the state court ordered that Debtor was the owner in fee simple of the Property, free and clear of any interest, claim, or lien of any of the defendants in this action. The state court awarded Debtor approximately \$497,982.07 in damages. (Doc. 29, Exh. A.)

On September 26, 2017, a notice of default as to the Property was issued (the "Notice of Default"). The Notice of Default indicates that it was sent to Edge, on account of its breach of a deed of trust encumbering the Property. The Notice of Default does not identify the Debtor. (Doc. 29, Exh. B.)

On May 4, 2018, Claimant filed Proof of Claim 2 in the amount of \$47,907.34 (the "Claim"). The Claim was signed by Herrera. No documentation was attached to the proof of claim. Herrera appears to be an officer of and agent for service of process for Claimant. (Doc. 29, Exh. D.)

On May 7, 2018, Claimant filed a *Notice of Postpetition Mortgage Fees, Expenses, and Charges* as to the Claim (the "Postpetition Fee Notice"). In the Postpetition Fee Notice, Claimant asserts that the Debtor owes various fees to Claimant on account of the Claim. Claimant also asserts that the principal amount of the claim is \$47,907.34. Attached to the Postpetition Fee Notice is Claimant's Deed of Trust.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

On June 4, 2018, Debtor filed an *Objection to Claim Filed by MH Capital Ventures, Inc., Claim No. 2 to Disallow Pursuant to 11 U.S.C. § 502(b)(1)* [doc. 17]. On June 19, 2018, Debtor filed an amended objection (the "Objection") [doc. 29]. As of July 3, 2018, no opposition has been filed.

**II. DISCUSSION**

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. FRBP 3001(c)(1) provides that when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

The Debtor seeks disallowance of the Claim on the grounds that the Claimant lacks standing to bring the Claim, and that the Debtor has no liability on the Claim. It appears that the Debtor is correct. The Debtor is not the borrower on Claimant's Deed of Trust. Instead, Edge is the borrower on Claimant's Deed of Trust, with Herrera signing on behalf of Edge. As the Debtor notes, the Judgment quieted title in favor of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

the Debtor and against Edge, Herrera, and the other named defendants. The Judgment held that any deed previously executed or recorded as to the Property by Edge, Herrera, or the other defendants was void and canceled. Claimant's Deed of Trust was executed and recorded before the Judgment was entered. Thus, pursuant to the Judgment, Claimant's Deed of Trust appears to be void and canceled.

**III. CONCLUSION**

In light of the forgoing, the Court will sustain the Objection.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10982 Gabriel Medina**

**Chapter 13**

**#72.00** Motion re: objection to claim number 1 by Claimant MH Capitol Ventures, Inc..

Docket 40

**Tentative Ruling:**

Grant; sustain objection to claim 1-1 on the Court's claim register, for the reasons stated in the Court's tentative ruling on calendar no. 71. The deed of trust attached to proof of claim 1-1 appears to have been voided pursuant to the state court judgment entered on October 5, 2016.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10448 Richard William Dier**

**Chapter 13**

**#73.00** Trustee's objection to debtor's homestead exemption

Docket 30

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtor filed a declaration attaching a photocopy of his United States passport and a letter from the Social Security Administration, both of which indicate that the debtor's birthdate is October 2, 1952. This evidence appears sufficient to show that the Debtor was over the age of 65 as of February 20, 2018, the date the debtor filed his chapter 13 petition. Absent further objection to the debtor's claimed exemption pursuant to California Code of Civil Procedure § 704.730(a)(3), the Court will overrule the chapter 13 trustee's objection without prejudice.

The chapter 13 trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Richard William Dier

Represented By  
Leon D Bayer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10515 Vergine Harutunian**

**Chapter 13**

**#74.00** Trustee's objection to debtor's exemption

Docket 22

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtor filed an opposition attaching evidence of a direct deposit into her bank account from the Social Security Administration, in the amount of \$1,200. (Doc. 36, Exh. A.) This evidence appears sufficient to show that the funds at issue are Social Security benefits as defined in California Code of Civil Procedure ("C.C.P.") § 704.080. Absent further objection to the debtor's claimed exemption pursuant to C.C.P. § 704.080, the Court will overrule the chapter 13 trustee's objection without prejudice.

The Court notes that in her schedule I, the debtor indicates no Social Security income. (Doc. 10, at p. 25.) **No later than August 10, 2018**, the debtor must file an amended schedule I that accurately reflects her Social Security income, which appears to be \$1,200 per month.

The chapter 13 trustee must submit the order within seven (7) days.

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

**Debtor(s):**

Vergine Harutunian

Represented By  
Aris Artounians

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10661 Andres Salcedo, Jr.**

**Chapter 13**

**#75.00** Trustee's objection to debtor's homestead exemption

Docket 24

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtor filed an amended Schedule C to claim an exemption in the amount of \$75,000 under California Code of Civil Procedure ("C.C.P.") § 704.730 in the real property located at 13321 Branford St., Pacoima, CA 91331. In addition, all of the debtor's remaining exemptions in the amended Schedule C are claimed pursuant to C.C.P. §§ 704.010 *et seq.* Absent further objections to the debtor's claimed exemptions in his amended Schedule C, the Court will overrule the chapter 13 trustee's objection without prejudice.

The chapter 13 trustee must submit the order within seven (7) days.

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

**Debtor(s):**

Andres Salcedo Jr.

Represented By  
Nicholas M Wajda

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10659 Edwin D. Larson**

**Chapter 7**

**#76.00** Debtor's motion to avoid lien under 11 U.S.C. §522(f) and, if applicable, for turnover of property

Docket 8

**Tentative Ruling:**

Deny. Contrary to the Court's order entered on May 16, 2018 [doc. 15], the debtor did not (i) file supplemental materials in support of the motion by June 19, 2018; or (ii) file and serve notice of the hearing on the motion.

The Court will prepare the order.

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

**Debtor(s):**

Edwin D. Larson

Represented By  
R Grace Rodriguez

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 10, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11696 Bianca Lorena Garcia**

**Chapter 7**

**#77.00** Application to Proceed in forma pauperis

Docket 6

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Bianca Lorena Garcia

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:15-12781 Florencio Santana, Jr. and Betty Lena Santana**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

U.S. BANK TRUST N.A.  
VS  
DEBTOR

fr. 5/2/18; 6/5/18

Docket 82

**Tentative Ruling:**

Grant the motion on the terms requested. No appearances required.

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

**Debtor(s):**

Florencio Santana Jr.

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Betty Lena Santana

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11172 Madeleine Brockway**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

HSBC BANK USA, N.A.  
VS  
DEBTOR

from: 6/6/18

Docket 38

**Tentative Ruling:**

I adopt the tentative ruling below.

**Ruling from 6/6/2018**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Madeleine Brockway**

**Chapter 13**

**Debtor(s):**

Madeleine Brockway

Represented By  
Tawni Takagi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:15-12332 Veronik Oganyan**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

FEDERAL NATIONAL MORTGAGE ASSOCIATION  
VS  
DEBTOR

from: 5/16/18

Docket 42

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 7/3/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Veronik Oganyan

Represented By  
Asbet A Issakhanian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11316 Karen Alpert**

**Chapter 7**

**#4.00 Motion for relief from stay [UD]**

ROBERT S. CORRY, TRUSTEE OF THE ROBERT AND NATHALIE CORRY  
FAMILY REVOCABLE TRUST  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

Karen Alpert

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11238 Ken Nakamura**

**Chapter 7**

**#5.00** Motion for relief from stay [PP]

NASA FEDERAL CREDIT UNION  
VS  
DEBTOR

Docket 19

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

Ken Nakamura

Represented By  
Stephen L Burton

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10071 LOST COAST RANCH INC.**

**Chapter 7**

**#6.00** Motion for relief from stay [RP]

BOBS, LLC  
VS  
DEBTOR

Docket 48

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

**Party Information**

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11997 Felipe De Jesus Torres Celaya**

**Chapter 7**

**#7.00 Motion for relief from stay [RP]**

JPMORGAN CHASE BANK, N.A.  
VS  
DEBTOR

Docket 57

**Tentative Ruling:**

Grant relief under §§ 362(d)(1) and (d)(4) and waiver of 14-day stay prescribed by FRBP 4001(a)(3). No appearances required.

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

**Debtor(s):**

Felipe De Jesus Torres Celaya	Pro Se
-------------------------------	--------

**Trustee(s):**

Diane C Weil (TR)	Pro Se
-------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10710 Nick A Avedissian and Hripsime Avedissian**

**Chapter 13**

**#8.00** Motion for relief from stay [PP]

DAIMLER TRUST  
VS  
DEBTOR

Docket 41

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

**Party Information**

**Debtor(s):**

Nick A Avedissian

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Hripsime Avedissian

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11886 Laura Elizabeth Daniels**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 38

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 6/15/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Laura Elizabeth Daniels

Represented By  
Brian J Soo-Hoo

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11480 Safi Noorzad**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

JPMORGAN CHASE BANK N.A.  
VS  
DEBTOR

Docket 18

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

Safi Noorzad

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10631 Syed Aijaz Mahdi**

**Chapter 13**

**#11.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 24

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

Syed Aijaz Mahdi

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:14-14688 Yacxiri Karina Leiva Abrego**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

FREEDOM MORTGAGE CORPORATION  
VS  
DEBTOR

Docket 121

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

Yacxiri Karina Leiva Abrego

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 303**

9:30 AM

**1:17-12848 CARLOS M PERAZA and BLANCA H PERAZA**

**Chapter 13**

**#13.00** Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING, INC  
VS  
DEBTOR

Docket 45

**Tentative Ruling:**

Grant on the terms requested. No appearances required.

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

**Debtor(s):**

CARLOS M PERAZA

Represented By  
Laleh Ensafi

**Joint Debtor(s):**

BLANCA H PERAZA

Represented By  
Laleh Ensafi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, July 11, 2018

Hearing Room 301

9:30 AM

1:18-10417 Deborah Lois Adri

Chapter 11

#14.00 Motion for relief from stay [PP]

DAIMIER TRUST  
VS  
DEBTOR

Docket 97

\*\*\* VACATED \*\*\* REASON: Order signed 06/29/2018

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#15.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 32

**Tentative Ruling:**

Deny because it appears the debtor has equity in the property and the case was filed less than 4 months ago. No appearances are required.

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11504 Juan Pedro Torres**

**Chapter 13**

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

Docket 12

**Tentative Ruling:**

Grant the motion.

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

**Debtor(s):**

Juan Pedro Torres

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #17.00** Pretrial conference re complaint
- 1) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)]
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17; 11/15/17; 12/13/17; 2/14/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 3/13/18 continuing hearing to 9/12/18 at 1:30 PM**

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702.

Deadline by which to file designation of expert witnesses: 3/1/18.

Deadline by which to file counter-designation of expert witnesses: 3/15/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 11, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

Deadline to complete discovery: 4/18/18.

Deadline to complete one day of mediation: 5/11/18.

Deadline to file pretrial motions: 5/25/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 6/27/18.

Pretrial: 1:30 p.m. on 7/11/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

Helayne Muennichow

Pro Se

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, July 16, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

**#1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18

Docket 1

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 17, 2018**

**Hearing Room 301**

8:30 AM

**1:18-10676 Natasha Fett**

**Chapter 7**

**#1.00** Reaffirmation agreement between Debtor and Ally Financial  
from: 6/19/18

Docket 10

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Natasha Fett

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 17, 2018**

**Hearing Room 301**

8:30 AM

**1:18-11083 Sebastian Martin Mele**

**Chapter 7**

**#2.00** Reaffirmation agreement between Debtor and Wells Fargo Dealer Services

Docket 8

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sebastian Martin Mele

Represented By  
Michael E Clark

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 17, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

**#3.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18

Docket 1

**Tentative Ruling:**

The Court will continue this trial to **9:30 a.m. on July 30, 2018.**

Appearances are excused on July 17, 2018.

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10774 Michel A. Contreras, IV and Carmen Contreras**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

from: 6/13/18

Docket 85

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Michel A. Contreras IV

Represented By  
Rene Lopez De Arenosa Jr

**Joint Debtor(s):**

Carmen Contreras

Represented By  
Rene Lopez De Arenosa Jr

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Michel A. Contreras, IV and Carmen Contreras**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12748 Mercedes Benitez**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

from: 6/13/18

Docket 39

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mercedes Benitez

Represented By  
Matthew D Resnik  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

9:30 AM

1:18-11471 Atif Sheikh and Naureen Sheikh

Chapter 7

#3.00 Motion for relief from stay [PP]

DAIMLER TRUST  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Atif Sheikh

Represented By  
Steven M Gluck

**Joint Debtor(s):**

Naureen Sheikh

Represented By  
Steven M Gluck

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#4.00 Motion for relief from stay [AN]

GABOR SZABO AND TAMAS SZABO  
VS  
DEBTOR

Docket 44

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

***A. The First Case***

On March 17, 2011, Mark Efrem Rosenberg (the "Debtor") filed a voluntary chapter 7 petition, commencing case no. 1:11-bk-13285-GM (the "First Case"). The Debtor did not schedule Gabor Szabo and Tamas Szabo (together, "Movants") or the Law Offices of Gabor Szabo (the "Law Office") as creditors in the First Case. On June 20, 2011, the Debtor received a chapter 7 discharge [doc. 13]. On June 27, 2011, the First Case was closed [doc. 15].

***B. The Pending Case***

On December 29, 2017, the Debtor filed a chapter 13 petition, commencing the pending case (the "Pending Case"). On December 31, 2017, the Court issued a Notice of Chapter 13 Bankruptcy Case (the "Pending Case Notice") [doc. 7]. The Pending Case Notice indicated that the deadline to file an adversary complaint objecting to discharge was April 23, 2018. The Pending Case Notice was not served on Movants.

On January 11, 2018, the Debtor filed an amended list of creditors [doc. 15], which included the Law Office. Movants do not dispute that they received timely notice of the Debtor's bankruptcy filing.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Mark Efreem Rosenberg**  
*C. The Relief from Stay Motion*

**Chapter 13**

On April 16, 2018, Movants filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 37] to continue litigating against the Debtor, among others, in state court (the "State Court Action"). Movants attached the state court complaint (the "State Court Complaint") to the RFS Motion.

Through the State Court Complaint, Movants alleged that the Debtor and other individual and corporate defendants converted Movants' property and defrauded Movants. Movants requested damages, as well as return of their property. Movants also attached purchase and lease agreements, all of which bear the signature of Gabor Rosenberg, who is alleged to be the Debtor's father.

In the RFS Motion, Movants allege that the Debtor filed his bankruptcy case in bad faith to delay the trial in the State Court Action, which was scheduled for January 29, 2018. Movants also argue that the Debtor is a "nondispensable [sic] party" in the State Court Action.

Movants seek relief from the automatic stay on the following grounds: (i) Movants seek recovery primarily from third parties and agree that the stay will remain in effect as to the enforcement of any resulting judgment against the Debtor or bankruptcy estate, and reserve the right to file a proof of claim or adversary complaint in the Debtor's case; (ii) the causes of action in the State Court Complaint are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum; and (iii) the causes of action in the State Court Complaint arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum. In addition, Movants seek annulment of the automatic stay to validate acts they took without knowledge of the Debtor's bankruptcy filing.

On June 20, 2018, the Debtor filed an opposition to the RFS Motion (the "Opposition") [doc. 48]. In support of the Opposition, the Debtor alleges that he filed the Pending Case on December 29, 2017 to halt a foreclosure sale of his residence scheduled by the junior lienholder. (Declaration of Mark Rosenberg, ¶ 9.) On January 25, 2018, the Debtor filed a motion to avoid the junior lien [doc. 18]. On March 15, 2018, the Court entered an order granting the motion to avoid the junior lien [doc. 33].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

9:30 AM

CONT...

**Mark Efreem Rosenberg**

**Chapter 13**

***D. The Law Office's Claim***

On May 31, 2018, the Law Office filed a proof of claim in the amount of \$600,000. The proof of claim appears to be based on the same debt alleged in the State Court Complaint. On June 8, 2018, the Debtor filed an objection to the Law Office's claim (the "Objection") [doc. 46]. On June 25, 2018, Movants filed a response to the Objection. On July 10, 2018, the Court sustained the Objection and disallowed the Law Office's claim, on the grounds that the Law Office had notice of the Pending Case, yet filed their claim after the claims bar date of March 9, 2018. (*See* doc. 53.)

**II. DISCUSSION**

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

***A. Effect of Discharge in the First Case***

In the Opposition, the Debtor notes that he did not list Movants in his schedules in the First Case. According to the Debtor, the chapter 7 discharge he obtained in the First Case discharged his unknown and unsecured debt, pursuant to the holding in *In re Beezley*, 994 F.2d 1433 (9th Cir. 1993). However, the Debtor is only partially correct. In *Beezley*, a debtor in a chapter 7, no-asset case filed a motion to reopen his case, so that he could amend his schedules to add an omitted debt. The bankruptcy court denied the debtor's motion to reopen. On appeal, Ninth Circuit Court of Appeals affirmed the bankruptcy court:

Based on the assumption that amendment was necessary to discharge the debt, [the debtor] sought to add an omitted debt to his schedules. [The debtor's], however, was a no asset, no bar date Chapter 7 case. After such a case has been closed, dischargeability is unaffected by scheduling; amendment of [the debtor's] schedules would thus have been a pointless exercise. . . . If the omitted debt is of a type covered by 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

9:30 AM

CONT...

**Mark Efreem Rosenberg**

**Chapter 13**

11 U.S.C. § 727. If the debt is of a type covered by 11 U.S.C. § 523(a)(3)(B), it has not been discharged, and is non-dischargeable. In sum, reopening here in order to grant [the debtor's] request would not have "accord[ed] relief to" [the debtor]; thus, there was no abuse of discretion.

*Beezley*, 994 F.2d at 1434.

Here, in the State Court Complaint, Movants' claims include claims for fraud and conversion, which Movants allege are nondischargeable in nature. Movants' claim for fraud appears to be of a type covered by 11 U.S.C. § 523(a)(2)(A), and movant's claim for conversion appears to be of a type covered by 11 U.S.C. § 523(a)(6). Pursuant to § 523(a)(3)(B), a chapter 7 discharge does not discharge an individual from a debt:

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

...

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

Movants were not listed as creditors in the First Case. If Movants never received notice of the First Case, then Movants' alleged claims under §§ 523(a)(2) and (a)(6) could potentially have been excepted from discharge in the First Case pursuant to § 523(a)(3)(B). Thus, the discharge injunction in the First Case may not bar Movants from pursuing their claims against the Debtor.

***B. The Pending Case***

Notwithstanding the foregoing, Movants are not entitled to relief from stay in the Pending Case to pursue the State Court Action. As noted above, on July 20, 2018, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

Court disallowed the Law Office's untimely claim in the amount of \$600,000, which was based on the State Court Complaint.

In addition, the deadline for Movants to file a nondischargeability complain in the Pending Case has passed. On December 29, 2017, the Debtor filed the Pending Case. On December 31, 2017, the Court issued the Pending Case Notice, which indicated that the deadline to file an adversary complaint objecting to discharge was April 23, 2018.

The limitation period to file a complaint is strictly construed. Section 523(c) as implemented by Rule 4007(c) places a heavy burden on the creditor to protect its rights. A debt . . . is automatically discharged unless the creditor either files a complaint to determine dischargeability or files a motion for extension of time within the 60 day statute of limitations.

*Herndon v. De La Cruz (In re De La Cruz)*, 176 B.R. 19, 22 (9th Cir. B.A.P. 1994).

In *De La Cruz*, two days after he filed his petition, the defendant mailed a letter to plaintiff's attorney informing him of his bankruptcy filing. Approximately six weeks after the nondischargeability complaint deadline, the plaintiff filed an nondischargeability complaint, which the bankruptcy court dismissed as untimely. On appeal, the plaintiff argued that he had not received written notice of the defendant's bankruptcy case, because mailings were sent to an incomplete address. The bankruptcy court had concluded that any defect in the address was harmless, because the notice had not been returned to sender.

"The Ninth Circuit [Court of Appeals] has held that notice is sufficient when the creditor has actual knowledge of the bankruptcy filing in time to file a complaint under § 523." *Id.* at 23. In *De La Cruz*, the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP") held that the plaintiff had actual notice of defendant's bankruptcy case:

We conclude that [the plaintiff] had actual notice of the bankruptcy for almost 90 days before the bar date in order to file a complaint to determine dischargeability of debt. At a minimum, [the plaintiff's] attorney should have reviewed the bankruptcy court file, which is a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mark Efrem Rosenberg**

**Chapter 13**

public record. Had he done so, he would have had ample time to file a complaint.

*Id.*

Here, because the Debtor did not include Movants in the original list of creditors, Movants did not receive the Pending Case Notice. However, the Debtor filed an amended list of creditors on January 11, 2018. In the amended list, the Debtor included the Law Office as a creditor and listed two different addresses for the Law Office. As a result, the Law Office and Gabor Szabo received actual notice of the bankruptcy case on January 11, 2018, well before the nondischargeability complaint deadline of April 23, 2018. Gabor Szabo, who is an attorney, should have reviewed the bankruptcy court file to determine the deadline to file a complaint objecting to the Debtor's discharge.

Because Movants had actual notice of the Pending Case and the nondischargeability complaint deadline has passed, Movants' claims are discharged and they may no longer seek nondischargeability of their debt in the Pending Case. Any judgment obtained against the Debtor in state court would not be enforceable against the Debtor. Accordingly, relief from the automatic stay in the Pending Case does not appear warranted on these grounds.

**C. *Bad Faith***

In the RFS Motion, Movants allege that the timing of the Pending Case was intended to interfere with the Nonbankruptcy Action. Trial in the State Court Action was scheduled to begin on January 29, 2018, a month after the petition date. However, the Debtor alleges that the Pending Case was filed on December 29, 2017, to halt an impending foreclosure sale of his residence by the junior trust deed holder and to avoid the junior lien. Movants have not submitted evidence to rebut the Debtor's allegations as to why he filed the Pending Case. Based on this evidence, it does not appear that the Pending Case was filed in bad faith.

**D. *Indispensable Party***

Movants argue that the Debtor is an indispensable party in the State Court Action. However, Movants' argument is conclusory and they do not explain why they cannot



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efre Rosenberg**

**Chapter 13**

proceed in the State Court Action against the other defendants. As the Debtor notes in the Opposition, the State Court Complaint seeks relief against the defendants under a theory of joint and several liability. Moreover, Movants may subpoena the Debtor in the State Court Action if they need him as a percipient witness.

**III. CONCLUSION**

In light of the foregoing, the Court will deny the RFS Motion. Movants have not shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the Debtor. Notwithstanding the foregoing, Movants may proceed against the non-debtor defendants in the nonbankruptcy action.

The Court will not annul the automatic stay. Movants have not identified any act that were taken in violation of the automatic stay without notice of the Pending Case.

The Debtor must submit an order within seven (7) days.

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

**Debtor(s):**

Mark Efre Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150      Tessie Cleveland Community Services Corp. v. Loghmani et al

- #5.00** Pretrial conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18; 4/11/18; 6/6/18

Docket 30

**Tentative Ruling:**

On June 6, 2018, during the previous pretrial conference, the Court instructed the defendants to submit witness and exhibit lists no later than July 9, 2018. The defendants have not timely submitted a witness or exhibit list. Consequently, the Court will prohibit the defendants from presenting exhibits or witness testimony at trial.

The Court will prepare the order adopting the Pretrial Stipulation [doc. 57].

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#6.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip); 5/2/18(stip); 6/6/18(stip)

**Stip to continue filed 5/15/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 5/16/18 continuing hearing to 8/1/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12215 Daniel Scott Borshell**

**Chapter 7**

Adv#: 1:17-01094 Oggi's Pizza and Brewing Co., Inc. v. Borshell

**#7.00** Status conference re complaint to determine dischargeability of a debt due to fraud, breach of fiduciary duties, and willful and malicious injury

fr. 1/24/18; 3/14/18(stip); 4/18/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing adversary entered 5/3/18 [doc. 23].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Daniel Scott Borshell

Represented By  
Jeremy Faith

**Defendant(s):**

Daniel Scott Borshell

Pro Se

**Plaintiff(s):**

Oggi's Pizza and Brewing Co., Inc.

Represented By  
Sandy S Isaac  
Thanasi Prevolos

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#8.00** Status conference re: second amended complaint for non-dischargeability of debt under section 523(a) for:  
(1) fraud or defalcation while acting in a fiduciary capacity [§523(a)(4)];  
(2) violations of securities law [§523(a)(19)];  
(3) and for denial of discharge for false oaths in bankruptcy documents [11 U.S.C. § 727(a)(4)(A)]

fr. 1/24/18; 3/7/18; 5/9/2018

Docket 42

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on August 1, 2018**, to be held with the hearing on the defendants' motion to dismiss [doc. 43].

Appearances are excused on July 18, 2018.

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Pro Se

Haykush Helen Kutyan

Pro Se

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:18-01002 TJ's Metal Manufacturing Inc v. Akhlaghpour

**#9.00** Pretrial conference re: complaint for non-dischargeability of debt pursuant to 11 USC 523(a)(4) and 11 USC 523(a)(6)

fr 3/14/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 4/24/18**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

TJ's Metal Manufacturing Inc

Represented By  
Bartolo D Carrillo



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13160 Shalva Shalom Krihali**

**Chapter 7**

Adv#: 1:18-01009 Zimmerman et al v. Krihali

**#10.00** Status conference re: complaint for determination of dischargeability and objection to debtor's discharge pursuant to section 523(a)(6)

fr. 3/14/18; 3/28/18, 6/6/18

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 8/31/18.

Deadline to complete one day of mediation: 9/14/18.

Deadline to file pretrial motions: 10/1/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/17/18.

Pretrial: 1:30 p.m. on 10/31/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Shalva Shalom Krihali**

**Chapter 7**

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Pro Se

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

Gabor Szabo

Represented By  
Gabor Szabo

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#11.00** Status conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's instructions from the prior status conference, the plaintiff did not submit a proposed scheduling order or a proposed mediation order.

**6/20/2018 Tentative:**

If the parties now have complied with Federal Rule of Bankruptcy Procedure 7026, the parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 8/15/18.

Deadline to complete one day of mediation: 8/31/18.

Deadline to file pretrial motions: 9/14/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/17/18.

Pretrial: 1:30 p.m. on 10/31/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11495 Steven Nia**

**Chapter 7**

Adv#: 1:18-01048      Nia v. U.S. ROF III Legal Title Trust 2015-1 by U.S. Bank

- #12.00**      Status conference re complaint for:  
                  1) temporary injunction  
                  2) preliminary injunction restraining defendants from  
                  conducting foreclosure sale of debtor's property

Docket      1

**Tentative Ruling:**

Through the complaint, the plaintiff sought to obtain an injunction preventing foreclosure of the real property located at 17977 Medley Drive, Encino, California 91316 (the "Property"). Given that the Court denied the plaintiff's motion for an injunction to stay the foreclosure proceedings, and the fact that the Property has now been sold, why is this proceeding not moot? The plaintiff should be prepared to discuss this issue.

If the proceeding is not moot, the Court intends to continue this status conference to 1:30 p.m. on September 12, 2018, to be held with the hearings on the motions to dismiss.

The Court is not waiving appearances for the status conference set for 1:30 p.m. on July 18, 2018, and the parties must appear to discuss the issues set forth above.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Defendant(s):**

Barrett Daffin Frappier Treder &

Pro Se

c/o Michael Griffith FCI Lender

Pro Se

c/o Ryan Zachreson, Recontrust

Pro Se

c/o GENPACT REGISTERED

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**

**Steven Nia**

**Chapter 7**

U.S. ROF III Legal Title Trust 2015-

Pro Se

**Plaintiff(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

1:30 PM

1:18-10465 Ziv Kanon

Chapter 13

Adv#: 1:18-01049 Kanon v. Wurzel et al

**#13.00** Status conference re: complaint for (1) Turnover of property of the estate pursuant to 11 USC 542(a) ; and (2) Judgment in the amount of the value of the property of the estate pursuant to 11 USC 542(a)

**Stip to continue filed 6/29/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Continued to 8/22/2018 at 2:30 p.m. per stipulation and order**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ziv Kanon

Represented By  
David S Hagen

**Defendant(s):**

Marc Wurzel

Pro Se

Doris Wurzel

Pro Se

Marc and Doris Wurzel Family Trust

Pro Se

**Plaintiff(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:16-13380 Sheree Gaynelle Solieman**  
Adv#: 1:18-01054 Goldman v. Soliemanzadeh

**Chapter 7**

- #14.00** Trustee's status conference re complaint for:
- 1) avoidance of actual fraudulent transfer (11 U.S.C. §548(a) (1) (A))
  - 2) avoidance of constructive fraudulent transfer §548 (a) (1) (B))
  - 3) avoidance of actual fraudulent transfer under applicable california law (cal. civ.code §§3439.04(a) (1) and 3439.07 and 11 U.S.C. §544 (b))
  - 4) avoidance of constructive fraudulent transfer under applicable california law (cal. civ. code §§3439.05 and 3439.07 and 11 U.S.C. §544 (b))
  - 5) recovery of avoided transfer (11 U.S.C. §550(a))
  - 6) preservation of avoided transfer (11 U.S.C. §551)

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 11/30/18.

Deadline to complete one day of mediation: 12/14/18.

Deadline to file pretrial motions: 1/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 1/30/19.

Pretrial: 1:30 p.m. on 2/13/18.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Sheree Gaynelle Solieman**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Sheree Gaynelle Solieman

Represented By  
Michael S Goergen  
Leonard Pena

**Defendant(s):**

Peyman Soliemanzadeh

Pro Se

**Plaintiff(s):**

Amy L Goldman

Represented By  
Leonard Pena

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Leonard Pena

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#15.00** Status conference re complaint to have debt excepted from discharge under 11 U.S.C.523a(2) (debt obtained through fraud, embezzlement and false pretenses).

Docket 1

**\*\*\* VACATED \*\*\* REASON: Another summons issued 7/13/18; Status hrg rescheduled to 09/12/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jorge Alberto Romero II Pro Se

**Defendant(s):**

Jorge Alberto Romero II Pro Se

**Plaintiff(s):**

Carlos Acevedo Pro Se

**Trustee(s):**

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10468 Patrick Abrahamian**

**Chapter 7**

Adv#: 1:18-01063 Cotton v. Abrahamian

**#16.00** Status conference re complaint to determine the non-dischargeability of debts under 11U.S.C. §523(a)(6)

Docket 1

**Tentative Ruling:**

The plaintiff did not timely serve the summons on the defendant. In his proof of service, the plaintiff indicates that he served the defendant with the summons and complaint on June 5, 2018. However, the summons expired on May 31, 2018.

The plaintiff must request an alias summons from the Court. The plaintiff can obtain an alias summons from the Court by sending a request letter to Courtroom Services, Attn: Patty Garcia, 21041 Burbank Blvd., Woodland Hills, CA 91367. The plaintiff must attach to this letter official Court Form F 7004-1, having completed the top caption and clearly indicating such summons is an alias summons by interlineating "Alias" where appropriate on the form.

This alias summons must be served upon the defendant within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004(e) and Local Bankr. R. 7004-1(b). The plaintiff must attach to the alias summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the alias summons and the complaint and instructions to be served with that summons, the plaintiff must file a signed proof of service indicating that the alias summons and the documents to be served with that summons were timely served on the defendant.

If the plaintiff can obtain an issued alias summons from the Court by August 17, 2018, the status conference will be continued to October 3, 2018 at 1:30 p.m.

**Party Information**

**Debtor(s):**

Patrick Abrahamian

Represented By  
Leo Fasen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Patrick Abrahamian**

**Chapter 7**

**Defendant(s):**

Patrick Abrahamian

Pro Se

**Plaintiff(s):**

Thomas Christian Cotton

Represented By  
Andrew R Delaflor

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10762 Jaime R Lara**

**Chapter 7**

Adv#: 1:18-01069 Lara v. Lara et al

**#17.00** Status conference re removal of state court action  
to bankruptcy court

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on August 15, 2018**, to be held in connection with the hearing on the chapter 7 trustee's motion to dismiss [doc. 5].

Appearances are excused on July 18, 2018.

**Party Information**

**Debtor(s):**

Jaime R Lara Pro Se

**Defendant(s):**

Jaime R Lara Pro Se

Diane E Lara Pro Se

Greaterla Escrow, Inc. Pro Se

Jaime Romero Lara and Diane Elise Pro Se

**Plaintiff(s):**

Benjamin C Lara Pro Se

**Trustee(s):**

Diane C Weil (TR) Represented By  
Elissa Miller  
Claire K Wu

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:11-11603 Kevan Harry Gilman**  
Adv#: 1:11-01389 Phillips et al v. Gilman

**Chapter 7**

**#18.00** Plaintiff's motion for certification under FRCP 54(b)

Docket 771

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On February 7, 2011, Kevan Harry Gilman ("Defendant") filed a voluntary chapter 7 petition. On May 13, 2011, Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Plaintiffs") filed a complaint against Defendant, initiating this adversary proceeding. In the Complaint, Plaintiffs alleged claims under 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6) and § 727(a)(2), (a)(4)(A) and (a)(4)(D). On November 9, 2013, Plaintiffs filed a supplemental complaint [doc. 283], adding additional claims under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4)(A) and (a)(6). On April 22, 2015, Plaintiffs filed an amended supplemental complaint [doc. 415], adding a supplement to Plaintiffs' claim under 11 U.S.C. § 727(a)(2) and adding a claim for attorneys' fees under California Code of Civil Procedure § 685.040.

On April 6, 2016, the Court held a pretrial conference. At that time, the Court suggested trifurcating this proceeding such that Plaintiffs' claim under 11 U.S.C. § 727(a)(2)(B) would be tried first and, if unsuccessful, the Court would adjudicate Plaintiffs' remaining claims under 11 U.S.C. § 727. If those claims also were unsuccessful, the Court would then adjudicate Plaintiffs' claims under 11 U.S.C. § 523. The parties agreed to the trifurcation. As such, on April 7, 2016, the Court entered an order setting trial on Plaintiff's § 727(a)(2)(B) claim [doc. 588].

On June 28 and 29, 2016 and August 12, 2016, the Court held trial on Plaintiffs' claim under 11 U.S.C. § 727(a)(2)(B). On November 3, 2016, the Court issued a decision denying Defendant's discharge under 11 U.S.C. § 727(a)(2)(B) [doc. 668]. On November 23, 2016, the Court entered judgment in favor of Plaintiffs (the "Judgment") [doc. 671].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

On December 7, 2016, Plaintiffs filed a motion for an award of attorneys' fees (the "Motion for Fees") [doc. 674]. On June 13, 2017, the Court entered an order granting in part and denying in part the Motion for Fees (the "Fee Order") [doc. 748]. On June 27, 2018, Plaintiffs filed a motion to reconsider the Fee Order (the "Motion for Reconsideration") [doc. 750]. On March 30, 2018, the Court entered an order denying the Motion for Reconsideration (the "Reconsideration Order") [doc. 758].

On April 13, 2018, Plaintiffs appealed the Fee Order and the Reconsideration Order [doc. 761]. On May 17, 2018, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") issued an order (the "BAP Order") instructing Plaintiffs to file a written response explaining how the Judgment is final given that there are additional claims left to be adjudicated [BAP Docket, 18-1101, doc. 4]. Specifically, the BAP expressed concern over Plaintiffs' remaining claims under 11 U.S.C. §§ 523 and 727. Alternatively, the BAP instructed Plaintiffs to obtain a determination under Federal Rule of Civil Procedure ("Rule") 54(b) from this Court [BAP Docket, 18-1101, doc. 4].

On June 6, 2018, Plaintiffs filed a motion requesting a determination the Judgment is a partial final judgment under Rule 54(b) [doc. 771]. Defendant has not opposed the Motion.

## **II. ANALYSIS**

Pursuant to Rule 54(b)—

When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

2:30 PM

CONT... Kevan Harry Gilman

Chapter 7

"A district court must first determine that it has rendered a 'final judgment,' that is, a judgment that is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005) (quoting *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1 (1980)). "Then it must determine whether there is any just reason for delay." *Id.*; see also *United States v. Gila Valley Irrigation Dist.*, 859 F.3d 789, 797 (9th Cir. 2017) ("[A]s Rule 54(b) makes plain, finality is achieved only if the court takes each of two steps—it must make an express determination that there is no just reason for delay and it also must make an express direction for the entry of judgment.") (internal quotation omitted).

"It is left to the sound judicial discretion of the district court to determine the 'appropriate time' when each final decision in a multiple claims action is ready for appeal. This discretion is to be exercised in the interest of sound judicial administration." *Curtiss-Wright*, 446 U.S. at 8. "Whether a final decision on a claim is ready for appeal is a different inquiry from the equities involved, for consideration of judicial administrative interests 'is necessary to assure that application of the Rule effectively 'preserves the historic federal policy against piecemeal appeals.'" *Wood*, 422 F.3d at 878 (quoting *Curtiss-Wright*, 446 U.S. at 8).

The Supreme Court indicated that it was proper for the district judge to consider such factors as whether the adjudicated claims were separable from the others and whether the nature of the claim was such that no appellate court would have to decide the same issues more than once. It suggested that while the absence of any of these factors would not necessarily mean that certification was improper, it would require the district court "to find a sufficiently important reason for nonetheless granting certification." *Id.* at 8 & n. 2, 100 S.Ct. 1460. The Court illustrated the point by observing that if the district court concluded that an appellate court might have to face the same issues on a later appeal, this downside might be offset by the upside of finding that appellate resolution of the certified claims might facilitate settlement of the remaining claims. *Id.* at 8 n. 2, 100 S.Ct. 1460.

*Wood*, 422 F.3d at 878 n.2.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

Here, the Court denied Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2)(B). The Judgment constituted "an ultimate disposition of [that] individual claim." *Wood*, 422 F.3d at 878. Moreover, although Plaintiffs have other pending claims under both 11 U.S.C. §§ 523 and 727, the parties previously agreed to trifurcation of this adversary proceeding to save time and resources. If Plaintiffs successfully obtained a judgment denying Defendant's discharge, Plaintiffs would not pursue their remaining claims in this adversary proceeding. Thus, once appeals are finalized, Plaintiffs will not pursue their other claims because the denial of Defendant's discharge will have mooted Plaintiffs' other claims. In addition, the claim under 11 U.S.C. § 727(a)(2)(B) is easily severable from the other claims asserted by Plaintiffs as it is the only claim arising from Defendant's postpetition transfers of retirement funds. As such, should the Court grant the Motion, the § 727(a)(2)(B), the appellate court will not have to decide the same issue more than once.

Defendant has not appealed the Judgment. After entry of the Judgment, Plaintiffs filed and litigated the Motion for Fees, which requests fees incurred prosecuting this adversary proceeding from its inception to the date Plaintiffs filed the Motion for Fees. Plaintiffs disagree with the Court's reasoning behind the Fee Order and the Reconsideration Order, and seek appellate review of these orders.

Given that the parties have been litigating this action for over seven years, there is no just reason to further delay this action by waiting to dispose of the remaining claims. An appeal of the Fee Order and Reconsideration Order will not lead to piecemeal appeals because the parties do not intend to litigate the remaining claims in this adversary proceeding once Plaintiffs' appeals are finalized. Both parties will benefit from prompt review of the Fee Order and the Reconsideration Order. In addition, Defendant does not oppose the Motion. In light of these facts, the Court will direct the entry of a final judgment under Rule 54(b).

### **III. CONCLUSION**

The Court will grant the Motion and direct the entry of a final judgment under Rule 54(b).

Plaintiffs must submit an order and an amended judgment under Rule 54(b) within

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Kevan Harry Gilman**  
seven (7) days.

**Chapter 7**

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Defendant(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Plaintiff(s):**

Tammy R Phillips

Represented By  
Charles Q Jakob

Tammy R Phillips A Prof Law Corp

Represented By  
Charles Q Jakob

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:13-14649 Marilyn S. Scheer**

**Chapter 7**

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

**#19.00** Defendant's motion to dismiss second amended complaint

Docket 361

**\*\*\* VACATED \*\*\* REASON: Order dismissing adversary entered 6/18/18  
[doc. 410].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Marilyn S. Scheer

Represented By  
David M Reeder

**Defendant(s):**

Daniel A Lee

Represented By  
Suzanne C Grandt

Tracey L McCormick

Represented By  
Suzanne C Grandt

Richard J Zanassi

Represented By  
Suzanne C Grandt

State Bar Of California

Represented By  
Suzanne C Grandt  
Marc A Shapp

Starr Babcock

Represented By  
Suzanne C Grandt

Thomas A Miller

Represented By  
Suzanne C Grandt

Lawrence Yee

Represented By  
Suzanne C Grandt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Marilyn S. Scheer**

**Chapter 7**

**Plaintiff(s):**

Marilyn S. Scheer

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#20.00** Motion to vacate amended default judgment against debtor/  
defendant Alice Sungjin Cheong

Docket 72

**Tentative Ruling:**

The Court will continue this matter to **August 1, 2018 at 2:30 p.m.**

Appearances on July 18, 2018 are excused.

**Party Information**

**Debtor(s):**

Alice Sungjin Cheong Pro Se

**Defendant(s):**

DOES 1 through 10, inclusive Pro Se

**Plaintiff(s):**

Mi Hee Kim Represented By  
Daren M Schlecter  
Konrad L Trope  
Kaela Haydu

KYUNG CHUL KIM Represented By  
Daren M Schlecter  
Kaela Haydu

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#21.00** Order to show cause why Alice Sungjin Cheong should not be held in contempt for failure to appear pursuant to the order to appear for examination entered on June5, 2018

Docket 80

**Tentative Ruling:**

The Court will continue this matter to **August 1, 2018 at 2:30 p.m.**

Appearances on July 18, 2018 are excused.

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

**Debtor(s):**

Alice Sungjin Cheong	Pro Se
----------------------	--------

**Defendant(s):**

DOES 1 through 10, inclusive	Pro Se
------------------------------	--------

**Plaintiff(s):**

Mi Hee Kim	Represented By Daren M Schlecter Konrad L Trope Kaela Haydu Ronald P Slates
------------	---

KYUNG CHUL KIM	Represented By Daren M Schlecter Kaela Haydu Ronald P Slates
----------------	---

**Trustee(s):**

Diane C Weil (TR)	Pro Se
-------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#22.00** Plaintiff's motion to substitute Helayne Muennichow  
as Defendant

Docket 45

**Tentative Ruling:**

**I. BACKGROUND**

On March 16, 2017, Hermann Muennichow ("Defendant") filed a voluntary chapter 7 petition. On June 12, 2017, Duane J. Van Dyke ("Plaintiff") filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6) and (a)(14) and requesting denial of Defendant's discharge under 11 U.S.C. § 727. On August 22, 2017, Defendant filed an answer to the Complaint [doc. 13].

On November 11, 2017, Defendant passed away [doc. 30, Exhibit A]. On November 16, 2017, the Court issued an order to appear and show cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC for Failure to Prosecute") [doc. 22]. On November 17, 2017, Plaintiff filed a response to the OSC for Failure to Prosecute mentioning the recent "recent death of the debtor" (the "Response to the OSC") [doc. 24, p. 3, lines 2-3].

On December 14, 2017, the Court entered a scheduling order (the "Scheduling Order") [doc. 27]. On the same day, the Scheduling Order was served on the chapter 7 trustee, Plaintiff's counsel, Defendant's counsel and the United States Trustee through NEF [doc. 28]. On December 16, 2017, the Scheduling Order was served on Plaintiff and Defendant by first class mail [doc. 28]. In the Scheduling Order, the Court stated:

The Court being apprised of the death of the Debtor Hermann Muennichow and it appearing that the Plaintiff seeks to move forward with this adversary proceeding,

It is hereby ordered that the status conference is continued to February  
14, 2018 at 1:30 p.m. in Courtroom 301 of the above-captioned Court;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Hermann Muennichow**  
and,

**Chapter 7**

It is further ordered that a status conference report be filed by January 31, 2018 to address, in addition to all other matters required in the report, *the status of any motion to substitute a party in place of the deceased debtor pursuant to Federal Rules of Procedure Rule 25(a)*.

(emphasis added). On February 1, 2018, Stuart R. Simone, Defendant's counsel, filed a declaration regarding the termination of the attorney-client relationship (the "Simone Declaration") [doc. 30]. In the Simone Declaration, Mr. Simone states that Defendant died on November 11, 2017. Attached is a copy of the death certificate [doc. 30, ¶ 3, Ex. A].

On February 15, 2018, the Court entered an order to show cause why the Court should not dismiss this adversary proceeding because of Defendant's death (the "OSC"). The OSC required Plaintiff to appear and explain how the Court could grant effective relief in this adversary proceeding [doc. 32].

On March 21, 2018, Plaintiff filed a response and declaration in reply to the Court's OSC (the "March Response") [doc. 35]. In the March Response, Plaintiff requested that the Court abstain from hearing this adversary proceeding under 11 U.S.C. § 1334(c)(1). However, Plaintiff also asserted that a determination of Plaintiff's claims in this proceeding remains relevant because of a dispute regarding certain life insurance proceeds. Allegedly, Plaintiff and Defendant's spouse, Helayne Muennichow, each claim an interest in these policy proceeds.

On April 4, 2018, the Court held a hearing on the OSC. At that time, the Court ruled that "in order to trigger the beginning of the statutory period [governing the timing of filing a motion for substitution under Federal Rule of Civil Procedure 25(a)], it appears appropriate that any notice of death be served on Mrs. Muennichow" (the "Deadline Ruling"). As such, the Court held that the 90-day period relevant to this Motion would not be triggered until Plaintiff served Ms. Muennichow with a notice of death.

On April 25, 2018, Plaintiff filed a unilateral status report (the "Status Report") [doc. 39]. In the Status Report, Plaintiff noted that:



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

The Debtor died shortly after he filed a response to the complaint. Our efforts to find an individual to act as a personal representative to substitute in as defendant have not been successful. Accordingly, Plaintiff has initiated a Probate proceeding seeking to have a personal representative appointed by the Probate Court. A hearing is calendared for May 18, 2018 in Probate Court at which time, we expect the Court to name a personal representative.

Status Report, p. 2. Plaintiff served the Status Report on Ms. Muennichow and Ms. Muennichow's attorney.

On May 9, 2018, the Court held a continued hearing on the OSC and a continued status conference. At that time, the Court discharged the OSC. In connection with the continued status conference, the Court instructed the parties to file additional briefs regarding whether Plaintiff has standing to pursue this adversary proceeding if Plaintiff did not timely file a proof of claim in Defendant's bankruptcy case. The Court further continued the status conference to 1:30 p.m. on August 9, 2018, and instructed the parties to file a joint status report updating the Court on the status of the probate proceedings.

On May 21, 2018, the Court entered a scheduling order (the "Second Scheduling Order") [doc. 42] continuing the status conference and setting a deadline for the filing of a joint status report. On May 22, 2018, in accordance with the Court's instructions, Plaintiff served the Second Scheduling Order on Ms. Muennichow and Ms. Muennichow's attorney [doc. 43].

On June 5, 2018, Plaintiff filed a motion to substitute Ms. Muennichow in place of Defendant (the "Motion") [doc. 45]. Plaintiff served notice of the Motion on Ms. Muennichow and Ms. Muennichow's attorney, but did not file proof of service of the Motion itself. On July 3, 2018, Ms. Muennichow filed an opposition to the Motion (the "Opposition") [doc. 51]. In the Opposition, Ms. Muennichow asserts that: (A) she was not properly served under Federal Rule of Civil Procedure ("Rule") 25(a)(3); (B) the Motion is untimely under Rule 25(a)(1); and (C) Ms. Muennichow is not a proper party because she has not been appointed the representative of Defendant's estate. On July 11, 2018, Plaintiff filed a reply to the Opposition [doc. 52].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

## II. ANALYSIS

### A. *Service on Ms. Muennichow*

Pursuant to Rule 25(a)(3)—

A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

Under Rule 4(e)—

*Unless federal law provides otherwise*, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
  - (A) delivering a copy of the summons and of the complaint to the individual personally;
  - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(emphasis added). Rule 4(e) is made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure ("FRBP") 7004(a)(1). Under FRBP 7004(b), "in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 18, 2018

Hearing Room 301

2:30 PM

CONT...

**Hermann Muennichow**

**Chapter 7**

may be made within the United States by first class mail postage prepaid as follows....  
[u]pon an individual... 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." FRBP 7004(b)(1).

Here, although Plaintiff served Ms. Muennichow with the *notice* of the Motion in accordance with FRBP 7004(b)(1), Plaintiff has not filed a proof of service of the Motion itself. As a result, Plaintiff's service is deficient under Rule 25(a)(3), which requires service of the Motion itself. Once Plaintiff cures this defect in service, the Court may rule on the merits of the Motion. Based on the FRBPs, which apply to this adversary proceeding, Plaintiff may serve Ms. Muennichow in accordance with FRBP 7004(b)(1), which governs service of summons on any parties to adversary proceedings, substituted or not. FRBP 7004 does not make an exception for Rule 25, incorporated into this adversary proceeding by way of FRBP 7025.

***B. Whether the Motion is Timely***

Pursuant to Rule 25(a)(1)—

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

The Court previously held that the 90-day period would not be triggered until Plaintiff served Ms. Muennichow with a notice of Defendant's death. *See Rende v. Kay*, 415 F.2d 983, 986 (D.C. Cir. 1969) (statement of death must "identify the representative or successor of an estate who may be substituted as a party for the deceased before Rule 25(a)(1) may be invoked"). Here, the only two documents that have been served on Ms. Muennichow are the Status Report and the Second Scheduling Order. As the Second Scheduling Order did not mention Defendant's death, it does not qualify as a notice of death.

In the Status Report, Plaintiff expressly noted that Defendant has passed away and that Plaintiff is seeking a representative of Defendant's estate to substitute into this action.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

Unlike cases where notices of death have been deemed informal, the Status Report explicitly discussed Defendant's death and the need for substitution of a party in a document filed with the Court. *See, e.g. Grandbouche v. Lovell*, 913 F.2d 835, 836-37 (10th Cir. 1990) (aggregating cases where notice was informal because of improper service or obscure mention of death in documents that were not filed on the docket). Plaintiff served the Status Report, in accordance with FRBP 7004(b)(1), on both Ms. Muennichow and Ms. Muennichow's counsel.

The Status Report qualifies as a notice of death, and the 90-day period found in Rule 25(a) was triggered upon service on April 25, 2018. As such, the deadline to file *and serve* a motion for substitution of a party will not run until July 24, 2018. Although Plaintiff filed the Motion within the 90-day period, Plaintiff must properly serve the Motion on Ms. Muennichow prior to the July 24, 2018 expiration date.

### **III. CONCLUSION**

The Court will continue the hearing on this Motion to **August 15, 2018 at 2:30 p.m.** for Plaintiff to provide proof of service of the Motion on Ms. Muennichow in accordance with FRBP 7004(b)(1). Plaintiff must file proof of service of the Motion and notice of the continued hearing date and time no later than **July 20, 2018**.

At the continued hearing, which will be held on the same day as the parties' continued status conference (the Court intends to reschedule the continued status conference from August 9, 2018 at 1:30 p.m. to August 15, 2018 at 2:30 p.m.), the Court will assess whether the probate court has designated a representative of Defendant's estate. If not, the Court may refrain from deciding whether Ms. Muennichow is a proper substitute party until the probate court appoints a representative of Defendant's probate estate.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11495 Steven Nia**

**Chapter 7**

Adv#: 1:18-01048      Nia v. U.S. ROF III Legal Title Trust 2015-1 by U.S. Bank

**#23.00**      Motion to withdraw as attorney for plaintiff

Docket      12

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Defendant(s):**

U.S. ROF III Legal Title Trust 2015-

Represented By  
Gwen H Ribar

c/o GENPACT REGISTERED

Pro Se

c/o Ryan Zachreson, Recontrust

Pro Se

c/o Michael Griffith FCI Lender

Pro Se

Barrett Daffin Frappier Treder &

Pro Se

FCI Lender Services, Inc.

Represented By  
Edward G Schloss

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 18, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Steven Nia**

**Chapter 7**

**Plaintiff(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

10:30 AM

**1:11-10439 Navid Bahrami-Daghigh**

**Chapter 11**

**#1.00** Application for payment of final fees and/or expenses  
for Brownstein & Brownstein, LLP, Debtor's Attorney,  
Period: 3/11/2009 to 1/3/2012

Docket 344

**Tentative Ruling:**

Brownstein & Brownstein, LLP ("Applicant"), counsel to the debtor and debtor in possession - approve fees in the amount of \$74,442.00, pursuant to 11 U.S.C. § 330.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

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

**Debtor(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12037 Menar Construction Co.**

**Chapter 7**

**#2.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Trustee

Docket 54

**Tentative Ruling:**

David Seror, chapter 7 trustee – approve fees of \$2,454.50 and reimbursement of expenses of \$85.39.

Menchaca & Company LLP, accountant to chapter 7 trustee – approve fees of \$3,205.50 and reimbursement of expenses of \$94.34.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

Menar Construction Co.

Represented By  
Dominic Afzali

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

10:30 AM

**1:17-10531 R & B Aircraft Supply, Inc.**

**Chapter 7**

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

Diane Weil, Chapter 7 Trustee

Docket 32

**Tentative Ruling:**

Diane C. Weil, chapter 7 trustee - approve fees of \$458.55 and reimbursement of expenses of \$104.40. Should additional funds come into the estate, no payments can be made without proper notice of such proposed distribution.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

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

**Debtor(s):**

R & B Aircraft Supply, Inc.

Represented By  
Steven R Fox

**Trustee(s):**

Diane C Weil (TR)

Represented By  
John N Tedford

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:11-10439 Navid Bahrami-Daghigh**

**Chapter 11**

**#4.00 Post confirmation status conference**

fr. 4/26/12; 8/30/12; 9/6/12; 9/13/12; 01/31/13; 7/18/13; 11/14/13;  
3/13/14; 9/18/14; 3/19/15; 9/17/15; 3/17/16; 9/15/16; 3/16/17; 9/14/17;  
3/15/18; 6/7/18

Docket 238

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**Movant(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:13-17502 Glenroy E Day, Jr.**

**Chapter 11**

**#5.00** Status conference in re-opened chapter 11 case  
pursuant to 11 U.S.C. sec 105(D)

fr. 4/12/18; 5/10/18

Docket 1

**Tentative Ruling:**

On July 10, 2018, the parties timely filed a *Joint Status Conference Statement* [doc. 269]. Having reviewed the *Joint Status Conference Statement*, and in light of the debtor's pending appeal of the *Order Regarding Debtor's Motion for Order Determining Value of Collateral* [doc. 261], the Court will continue this status conference to **November 15, 2018 at 1:00 p.m.**

No later than **November 1, 2018**, the reorganized debtor must file a status report regarding the progress of the pending appeal. The status report **must be supported by evidence.**

Appearances on July 19, 2018 are excused.

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

**Debtor(s):**

Glenroy E Day Jr.

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#6.00 U.S. Trustee motion to dismiss or convert**

Docket 194

**Tentative Ruling:**

On June 25, 2018, the Court entered an order closing this bankruptcy case on an interim basis [doc. 199]. In light of the closing of this bankruptcy case, how does the U.S. Trustee intend to proceed with the motion to dismiss this case?

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

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#7.00** Post-Confirmation status conference re chapter 11 case

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017;  
1/11/18; 1/25/18; 3/15/18

Docket 1

**Tentative Ruling:**

In his *Post-Confirmation Status Report* [doc. 254], the reorganized debtor has not addressed whether and how he will cure delinquent payments to the holders of unsecured priority claims.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#8.00** Confirmation hearing re First Amended Chapter 11 Plan  
fr. 5/3/18(stip); 6/7/18(stip)

**Stip to continue filed 6/22/18**

Docket 114

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 6/22/18  
continuing hearing to 8/16/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#9.00** Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip)

**Stip to continue filed 6/22/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 6/22/18  
continuing hearing to 8/16/18 at 1:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#10.00** Motion of Golden Spectrum Property, LLC, landlord, regarding the Massage Envy Palmdale location (Hampton Heights, Inc.), for allowance and immediate payment of administrative claim for unpaid post-petition rent

fr. 6/14/18

Docket 288

**Tentative Ruling:**

As discussed in the tentative ruling posted for June 14, 2018, the Court will allow the unpaid postpetition rent owed to Golden Spectrum Property, LLC (the "Unpaid Rent") as an administrative expense. However, because, among other things, there are insufficient funds to pay all claimed administrative expenses in full, the Court will not mandate the immediate payment of the Unpaid Rent.

***Tentative Ruling for June 14, 2018***

Grant.

**I. BACKGROUND**

On April 28, 2017, Capri Coast Capital, Inc. filed a voluntary chapter 11 petition. On June 9, 2017, Hampton Heights, Inc. ("Hampton") filed a voluntary chapter 11 petition [1:17-bk-11545-VK]. On August 2, 2017, the Court entered an order granting the Debtor's motion for joint administration of its case with Ravello Ventures, Inc., Amalfi Assets, Inc., and Hampton (collectively, the "Debtors") [doc. 43].

On February 28, 2018, the Debtors filed a motion to approve the sale of substantially all of the Debtors' assets (the "Sale Motion") [doc. 221]. On April 5, 2018, the court entered an order granting the Sale Motion [doc. 257]. The Debtors received approximately \$216,750 in proceeds from the closing of the sale.

Golden Spectrum Property, LLC ("Golden") was the landlord for the Palmdale location operated by Hampton. Hampton was current on its rent payments up through March 2018. Hampton was in possession of its location until April 5, 2018. Golden

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

alleges that Hampton did not pay rent for April 1-5, 2018, in the amount of \$1,953.33.

On May 24, 2018, Golden filed the pending *Motion of Golden Spectrum Property, LLC, Landlord, Regarding the Massage Envy Palmdale Location (Hampton Heights, Inc.) for Allowance and Immediate Payment of Administrative Claim for Unpaid Post-Petition Rent* (the "Motion") [doc. 288]. In the Motion, Golden argues that the unpaid rent in the amount of \$1,953.33 is an actual and necessary expense of preserving the Hampton estate. As such, the unpaid rent should be deemed allowed as a post-petition administrative expense and paid immediately.

On May 31, 2018, the Debtors filed a limited opposition to the Motion [doc. 293]. The Debtors do not oppose Golden's request for a liquidated administrative claim in the amount of \$1,953.33 against the Hampton estate. However, the Debtors argue that such claim should be paid pro-rata with other administrative claimants when such payments are made, and the claim should be against Hampton only.

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 503(b), "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate . . .". Pursuant to 11 U.S.C. § 365(d)(3),

The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

The parties do not dispute that Golden's claim for unpaid rent in the amount of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

1:00 PM

CONT... **Capri Coast Capital, Inc.**

**Chapter 11**

\$1,953.33 should be deemed an allowed administrative expense against the Hampton estate. However, the parties disagree whether such claim should be paid immediately, or pro rata with other administrative claimants when such payments are made.

Some courts hold that the failure to pay postpetition rent entitles a lessor to immediate payment on its administrative claim, subject to disgorgement if there are insufficient funds to pay all administrative claimants in full. In *In re Four Star Pizza, Inc.*, 135 B.R. 498 (Bankr. W.D. Pa. 1992), a debtor leased premises for operation of its pizza parlor. The debtor filed a chapter 11 petition. Three months later, the court entered an order granting the debtor's motion to reject the lease for the premises. Between the petition date and the rejection of the lease, the debtor occupied the premises without paying rent. The debtor's subsequently filed chapter 11 plan provided for the payment in full of all administrative claims on the effective date of the plan. Before the disclosure statement was approved, the landlord filed a motion to compel the payment of rent as an administrative expense, pursuant to § 365(d)(3). The court granted the motion holding that "[a] nonresidential lessor's administrative expense claim which arises under § 365(d)(3) shall be paid immediately, absent a showing of substantial doubt that there will be sufficient funds available to pay all administrative claimants in full." *Id.* at 500. However, the court further held that the rent payments were:

entitled to payment on a pro rata basis with all other allowed chapter 11 administrative claims. The order directing immediate payment of movant's claim will be subject to debtor's right to seek recovery of all or part of the payment in the unlikely event that all other chapter 11 administrative claimants are not paid in full.

*Id.* (citing *In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 973 (Bankr. E.D. Pa. 1987)).

Other courts hold that courts have discretion whether to order immediate payment. In *In re Washington Bancorporation*, 126 B.R. 130 (Bankr. D.D.C. 1991), the court determined that a landlord was entitled to an administrative expense on account of a debtor's unpaid post-petition rent. The landlord sought immediate payment of the administrative expense. The court held that immediate payment was required, unless the debtor could establish good cause for withholding payment. The court found that the debtor-in-possession had over \$900,000 in cash on hand, and did not show good cause for a delay of payment. *Id.* at 131. Accordingly, the court granted the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

landlord's motion and ordered immediate payment of the unpaid rent at issue.

In light of the circumstances of this case, the Court will order the immediate payment of Golden's administrative expense claim. The Debtors appear to be holding approximately \$216,750 in cash from the sale proceeds. Golden's claim is in the amount of \$1,953.33. The Debtors have not shown "substantial doubt that there will be sufficient funds to pay all administrative claimants in full." Nor have the Debtors shown good cause for delaying the payment of this relatively small amount.

**III. CONCLUSION**

In light of the foregoing, the Court will grant the Motion. Golden's administrative expense claim is entitled to payment on a pro rata basis with all other chapter 11 administrative claimants of the Hampton estate. The Debtors are ordered to pay the amount of \$1,953.33 to Golden within seven (7) days following entry of the order. The amount paid to Golden is subject to disgorgement if there are insufficient funds to pay all administrative claimants in full.

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#11.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18,  
6/14/18 stip

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#12.00** U.S. Trustee Motion to dismiss or convert Notice Of Motion And Motion Under 11 U.S.C. § 1112(b) To Dismiss Or Convert Case; Declaration Of Alfred Cooper III . (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)(Clementson, Russell)

fr. 6/7/18, 6/14/18 stip  
**STIP filed 6/19/18**

Docket 271

**\*\*\* VACATED \*\*\* REASON: Order entered 6/21/18 continuing hearing to 9/20/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#13.00** Disclosure statement describing chapter 11 plan

fr. 5/3/18; 6/7/18, 6/14/18 stip

**STIP filed 6/19/18**

Docket 214

**\*\*\* VACATED \*\*\* REASON: Order entered 6/21/18 continuing hearing to  
9/20/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#14.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18; 6/14/18;

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#15.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/17; 5/17/18; 6/7/18; 6/14/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#16.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17;  
2/8/18; 6/7/18; 6/7/18; 6/14/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#17.00 Second Amended Disclosure Statement hearing**

fr. 5/10/18; 6/21/18

Docket 139

**Tentative Ruling:**

Proposed dates and deadlines regarding "Individual Debtor's Second Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Individual Debtor's Second Amended Disclosure Statement in Support of Plan of Reorganization:"

Hearing on confirmation of the Plan: **September 13, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **July 27, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **August 24, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **September 4, 2018.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Herbert Simmons**

**Chapter 11**

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#18.00** Status conference re chapter 11 case

fr. 9/7/17; 10/5/17; 2/8/18; 3/15/18; 5/10/18; 6/21/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on September 13, 2018**, to be held with the hearing on confirmation of the debtor's chapter 11 plan of reorganization.

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

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

1:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#19.00 Amended Disclosure Statement hearing**

Docket 59

**Tentative Ruling:**

The debtors have not included projections demonstrating that the debtors' proposed chapter 11 plan will be feasible. The debtors must amend the disclosure statement to include an attached spreadsheet outlining the debtors' monthly income and expense projections during the life of the proposed chapter 11 plan. The debtors should itemize each separate source of projected monthly income. In calculating their monthly expenses, the debtors should include both projected plan payments and other projected monthly expenses.

The debtors also must include a *Declaration of Current/Postpetition Income and Expenses* in their amended disclosure statement. The debtors should account for their postpetition income taxes in both their attached projections and the *Declaration of Current/Postpetition Income and Expenses*.

In addition, the debtors have not proposed treatment for the claims of Wells Fargo or the Franchise Tax Board. Moreover, the debtors have included the claim of the Internal Revenue Service (the "IRS") as a general unsecured claim. However, both the debtors' schedules and the IRS' proof of claim indicate that the IRS holds a priority claim. The debtors' proposed chapter 11 plan does not designate the IRS as a priority claimant. The debtors should amend their chapter 11 plan to address these issues.

The debtors must file an amended chapter 11 plan and related disclosure statement no later than **August 20, 2018**. If the debtors timely file an amended chapter 11 plan and related disclosure statement, the Court will set a hearing on the adequacy of the debtors' amended disclosure statement on **October 4, 2018 at 1:00 p.m.**

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

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#20.00** Status conference re chapter 11 case

fr. 12/21/17; 1/11/18; 5/24/18; 6/7/18

Docket 1

**Tentative Ruling:**

The debtors' monthly operating report for May 2018 (and prior monthly operating reports as well) does not discuss the calculation and payment of quarterly fees owed to the U.S. Trustee.

Have the debtors filed their 2017 federal income tax return? If so, in accordance with the Court's order setting the initial chapter 11 case status conference [doc. 13], the debtors must file that income tax return with the Court.

**Party Information**

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#21.00** Status conference re: chapter 11 case

fr. 3/15/18

Docket 14

**Tentative Ruling:**

Pursuant to 11 U.S.C. §§ 105 and 1112(b)(1) and (4)(F) and (H), the Court will dismiss the debtor's case.

On January 18, 2018, the debtor filed a voluntary chapter 11 petition. On February 20, 2018, the debtor filed an emergency motion to use cash collateral (the "Cash Collateral Motion") [doc. 20]. On June 7, 2018, the Court entered an order denying the Cash Collateral Motion (the "Cash Collateral Order") [doc. 68], for the reasons stated in its ruling posted to the docket [doc. 67]. Through the Cash Collateral Order, the Court denied the debtor's request to use cash collateral because the rents generated by the debtor's real property were no longer property of the debtor's estate.

On July 10, 2018, Wells Fargo Bank, N.A. filed a motion to dismiss the debtor's case (the "Wells Fargo Motion to Dismiss") [doc. 75]. The hearing on the Wells Fargo Motion to Dismiss is set for August 2, 2018 at 2:00 p.m.

On July 11, 2018, the debtor filed a *Chapter 11 Status Report* (the "Status Report") [doc. 83]. In the Status Report, the debtor acknowledges that it cannot proceed with its case in light of the Cash Collateral Order. The debtor also acknowledges that it is not in compliance with United States Trustee requirements. Accordingly, there is cause to dismiss this case under 11 U.S.C. §§ 1112(b)(4)(F) and (H), because the debtor has failed to satisfy timely reporting requirements without providing any explanation, and has not timely provided information reasonably requested by the United States Trustee. The debtor consents to the dismissal of its case.

In light of the Cash Collateral Order and the assets and liabilities stated in the debtor's schedules, it appears that the conversion of this case to chapter 7 will not generate a return to unsecured creditors. Thus, rather than converting this case to one under chapter 7, the Court concludes that it is in the best interest of creditors and the estate

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... JBC Staples, LLC**

**Chapter 11**

to dismiss this case. The Court will retain jurisdiction to award any appropriate judgment in favor of the United States Trustee.

The Court will vacate the hearing on the Wells Fargo Motion to Dismiss.

The Court will prepare the order.

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

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#22.00** U.S. Trustee Motion Under 11 U.S.C. § 1112(b) To Dismiss Or Convert Case

Docket 37

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 6/28/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

**#23.00** U.S. Trustee's Motion to extend bar date for filing complaint objecting to Debtors discharge and/or a motion to dismiss per section 707(b)

Docket 24

**Tentative Ruling:**

Grant. The Court will extend the deadline for the U.S. Trustee to file an objection to discharge under 11 U.S.C. § 727 or a motion to dismiss under 11 U.S.C. § 707(b) to **July 23, 2018**.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Francois E. Franckaert Mendoza

Represented By  
Elena Steers

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11318 Marcin Lambirth LLP**

**Chapter 7**

**#24.00** Status conference re: Chapter 7 Involuntary petition

Docket 1

**Tentative Ruling:**

The Court will enter an Order for Relief in this chapter 7 case.

The Court will prepare the Order.

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

**Debtor(s):**

Marcin Lambirth LLP

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11380 Fairfax Property Group LLC**

**Chapter 7**

**#25.00** U.S. Trustee's Motion for order compelling attorney to file disclosure of compensation pursuant to 11 U.S.C. § 329

Docket 10

**\*\*\* VACATED \*\*\* REASON: withdrawal filed on 6/22/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Fairfax Property Group LLC

Represented By  
Lee M Linson

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#25.10** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Approving payment of commissions; (4) Finding purchaser is a good faith purchaser; (5) Waiving Stay under Rule 6004(H); and (6) Directing turnover of real property

fr. 6/7/18; 7/5/18

Docket 228

**Tentative Ruling:**

**7/5/2018 Tentative:**

Grant.

**I. BACKGROUND**

On October 11, 2017, Mehri Akhlaghpour ("Debtor") filed a voluntary chapter 11 petition. On February 1, 2018, the Court issued an order directing the appointment of a chapter 11 trustee [doc. 101]. On February 6, 2018, Nancy J. Zamora was appointed the chapter 11 trustee (the "Trustee") [doc. 107].

In her schedule A/B [doc. 59], Debtor listed an ownership interest in six real properties in the following locations: (A) 4450 Winnetka Avenue, Woodland Hills, CA 91364 (the "Winnetka Property"); (B) 17315 Cagney Street, Granada Hills, CA 91344 (the "Cagney Property"); (C) 5454 Zelzah Avenue, Apt. 302, Encino, CA 91316 (the "Zelzah Property"); (D) 26943 Hillsborough Parkway, Unit 27, Valencia, CA 91354 (the "Hillsborough Property"); (E) 16320 Gledhill Street, North Hills, CA 91343 (the "Gledhill Property"); and (F) 8338 Woodley Place, Unit 28, North Hills, CA 91343 (the "Woodley Property"). Debtor also listed a 100% interest in eight business entities and a 32 % interest in another business entity, as well as three claims against third parties.

On February 7, 2018, the Trustee filed an application to employ Rodeo Realty, Inc.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

(the "Broker") as a real estate broker [doc. 110]. On March 15, 2018, the Court entered an order approving the application to employ the Broker [doc. 135].

On March 16, 2018, the Trustee filed motions to sell the Hillsborough Property [doc. 145] and the Woodley Property [doc. 146]. On March 22, 2018, the Trustee filed a motion to sell the Zelzah Property [doc. 155]. On April 12, 2018, the Trustee filed motions to sell the Cagney Property [doc. 175] and the Gledhill Property [doc. 178].

On April 17, 2018, the Court entered orders approving the sales of the Hillsborough Property [doc. 192] and the Woodley Property [doc. 193]. On April 24, 2018, the Court entered an order approving the sale of the Zelzah Property [doc. 205]. On May 15, 2018, the Court entered orders approving the sales of the Gledhill Property [doc. 225] and the Cagney Property [doc. 226].

On May 17, 2018, the Trustee filed a motion to sell the Winnetka Property (the "Motion") [doc. 228] to Kamran Taleby (the "Purchaser") for \$1,225,000.00. On the same day, Debtor filed a proposed chapter 11 plan [doc. 236] and related disclosure statement [doc. 237].

On May 24, 2018, Wilmington Savings Fund Society, FSB ("Wilmington") filed a conditional opposition to the Motion [doc. 242], stating that it does not oppose the sale as long as it is paid in full. On June 21, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 257], asserting that: (A) the Trustee does not have a good business reason to sell substantially all of the estate's assets; (B) the Trustee did not adequately market the Winnetka Property; (C) the sale will interfere with Debtor's proposed chapter 11 plan; (D) the Trustee did not consider at least one offer from a purchaser named Armen Ohanian; (E) the sale is an inappropriate *sub rosa* plan; (F) the sale interferes with Debtor's and others' due process rights.

On June 28, 2018, the Trustee filed a reply to the Opposition (the "Reply") [doc. 258], wherein the Trustee agreed to the terms set forth by Wilmington. As for the Opposition, the Trustee asserts, among other things, that the sale is not for substantially all of the estate's assets and, even if it were, the Trustee has provided several good business reasons to move forward with the sale. The Trustee also argues that the purchase price reflects the best offer for the Winnetka Property, and the Broker did attempt to contact Mr. Ohanian but did not receive a response from Mr.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

1:00 PM

CONT... Mehri Akhlaghpour

Chapter 11

Ohanian regarding overbidding on the Winnetka Property.

## II. ANALYSIS

### A. General Sale Standard

Pursuant to 11 U.S.C. § 363(b)(1), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" subject to an exception that does not apply here. A trustee has broad authority to negotiate sales of estate property under 11 U.S.C. § 363(b)(1); *see also In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). In reviewing motions to sell property under § 363(b), a court must determine whether sound business reasons support the sale outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988).

### B. Good Business Reason Justifying Sale

Debtor objects to the sales of the Winnetka Property on the grounds that the Motion proposes to sell substantially all of the estate's assets, and that the Trustee has not supported her decision with a good business justification. In support of her argument, Debtor references *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983). In *Lionel*, the Second Circuit Court of Appeals outlined six factors for determining whether a good business reason exists justifying a sale of substantially all of the assets of the debtor:

[Courts should] look to such relevant factors as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

*Lionel*, 722 F.2d at 1071.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

1:00 PM

CONT... **Mehri Akhlaghpour**

**Chapter 11**

First, *Lionel* is distinguishable because the debtor in *Lionel* sought authority to sell substantially all of the estate's assets. In the Opposition, Debtor asserts that the Winnetka Property is equivalent to 37% of the estate's overall value. Debtor calculates this number by dividing the sale price of the Winnetka Property by the aggregate value of all of the estate's real properties. However, the six real properties are not the only assets of this estate. In her calculation, Debtor omits the estate's 100% interest in eight business entities and a 32% interest in another business entity. Debtor also omits her interest in three claims against third parties. As such, even accounting for the Trustee's prior sales of the other real properties, the subject sale will not result in the sale of substantially all of the estate's property.

Even if *Lionel* is applicable, however, the Trustee has provided a "good business reason" justifying the sale of the Winnetka Property. Specifically, the Trustee has articulated a number of reasons for the sale, including that: (1) the completion of the sale is a necessary step towards, and for the Trustee to determine the feasibility of, a chapter 11 liquidating plan; (2) the purchase price for the Winnetka Property is fair and reasonable because it constitutes the highest offer amount received by the Trustee thus far after extensive marketing efforts by the Broker; and (3) the purchase price will be further "market tested" by potential overbidding at the hearing on the Motion. In addition, Debtor filed her chapter 11 petition nearly nine months ago. As such the Motion is not premature.

Debtor asserts that the purchase price is too low based on two appraisals obtained by Debtor, which reflect a market value of \$1,466,800 as of May 24, 2018 and \$1,305,000 as of March 30, 2017. Notwithstanding the issues presented by the Trustee regarding the lack of adequate comparable properties in the appraisals, the appraisals set forth a value based on several assumed factors. In contrast, the \$1,225,000 purchase price to which the Trustee and the Purchaser agreed reflects the result of *actual* marketing efforts. Debtor has not demonstrated that continued marketing of the Property or different methods of marketing the Winnetka Property would lead to a higher purchase price. Given that the marketing of the Winnetka Property has generated multiple interested buyers, it appears that the sale prices reflect the market, and that the Winnetka Property has been marketed for enough time to generate competitive interest. The sale also is subject to overbid; should there be any interested purchasers willing to pay over \$1,255,000, they will have the opportunity to do so pursuant to the overbid procedures outlined in the Motion.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Moreover, approval of this sale will not have an effect on a proposed disposition on future plans of reorganization. First, the Trustee does not intend to immediately distribute the sale proceeds. Further, the Winnetka Property does not generate rents for Debtor to use to fund a plan, nor does Debtor's proposed plan depend on a future sale of the Winnetka Property. In addition, the Court will not approve Debtor's disclosure statement at this time (as set forth in the ruling on that matter), and the Court will not indefinitely stay administration of this estate until Debtor provides a disclosure statement containing adequate information. As noted in the ruling on the disclosure statement, Debtor's proposed chapter 11 plan depends in large part on purported settlement agreements with certain unsecured creditors, which Debtor mentions in the Opposition as well. The Court has no admissible evidence regarding the nature of these agreements, such as the source of the funds used to purportedly settle with creditors and whether the estate has been released of any and all liability. Without additional information, the Court cannot approve Debtor's disclosure statement, and cannot find that the "likelihood of confirmation is high." Opposition, p. 6.

***C. The Trustee's Business Judgment***

As outlined by the Bankruptcy Appellate Panel of the Ninth Circuit:

The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances. The requirement of a notice and hearing operates to provide both a means of objecting and a method for attracting interest by potential purchasers. Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's.

*In re Lahijani*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

Debtor questions the Trustee's business judgment based on Debtor's assertion that the Trustee did not consider an offer by a potential buyer, Armen Ohanian. However, Debtor's assertion is belied by the evidence provided by the Trustee in the Reply, which demonstrates that the Broker contacted Mr. Ohanian on two separate occasions

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

1:00 PM

CONT... Mehri Akhlaghpour

Chapter 11

to inquire about an overbid but did not receive a response. Reply, Declaration of Behnaz Tavakoli, ¶¶ 7-8, Exhibit 1.

In addition, as noted previously by the Court, the Trustee has been a chapter 7 trustee since 1998 and also has been a chapter 11 trustee in cases involving real estate. In those capacities, the Trustee has operated rental properties and sold over one hundred properties. Declaration of Nancy J. Zamora [doc. 228], ¶ 2. Based on the Trustee's record of experience, she may properly be afforded business judgment deference.

***D. Sub-Rosa Plan***

Debtor also argues that the sale of the Winnetka Property constitutes an impermissible "sub-rosa" plan. However, the proposed sale does not take the place of a plan. After paying the allowed claims of creditors secured by the Winnetka Property, the Trustee is not proposing to distribute net proceeds to other creditors at this time. *See In re Air Beds, Inc.* 92 B.R. 419 (B.A.P 9th Cir. 1988).

In addition, Debtor does not argue that the sale runs afoul of the chapter 11 requirements for confirmation of a plan. Debtor only argues that Debtor may not receive a discharge if the Court confirms a liquidating plan. 11 U.S.C. § 1141(d)(3). However, not all liquidating plans remove the possibility of discharge for a debtor. Pursuant to 11 U.S.C. § 1141(d)(3), a debtor does not receive a discharge if the plan provides for liquidation of all or substantially all of the property of the estate *and* "the debtor does not engage in business after consummation of the plan" *and* "the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title." 11 U.S.C. § 1141(d)(3)(A)-(C). Debtor has not articulated why all of these elements would be met if the Trustee were to propose a liquidating plan. In any case, Debtor may raise this argument in opposition to a future plan proposed by the Trustee; an opposition on this basis is not sufficient justification to deny the Motion.

***E. Due Process Considerations***

Debtor also asserts that the Motion should be denied because § 363 sales are an inappropriate violation of the due process rights of Debtor and creditors to the estate. However, Debtor and the estate's creditors have been served with notice of the sale, and have had an opportunity to object. Furthermore, the Trustee has demonstrated

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

that the sale of the Winnetka Property will generate funds with which she can make distributions to creditors. Finally, pursuant to the overbid procedures built into the sale terms, Debtor and any other interested party has the opportunity to bid on the Winnetka Property. Consequently, Debtor has not demonstrated that the sale will violate Debtor's or other parties' due process rights, and there is no binding authority that stands for Debtor's broad and general proposition that sales under 11 U.S.C. § 363 violate a debtor's or creditors' due process rights.

**III. CONCLUSION**

The Court will grant the Motion and approve the sale of the Winnetka Property.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#25.20** Disclosure statement describing chapter 11 plan of reorganization

7/5/18

Docket 235

**Tentative Ruling:**

In her reply [doc. 259], the debtor has agreed to amend the disclosure statement to make the following changes: (A) clarify that the debtor intends to object to certain proofs of claim; (B) accurately set forth whether each class is impaired or unimpaired; (C) clarify that unsecured creditors will be paid quarterly; (D) further divide the classes of unsecured creditors; (E) include the correct interest rate of 5.99% with respect to treatment of Class 13; (F) reference the stipulated judgment with Emymac, Inc.; (G) incorporate information regarding the cash on hand in the estate; (H) include additional risk factors; (I) include a discussion of the absolute priority rule; and (J) clarify that certain holders of unsecured claims will not receive distribution through the plan because they were scheduled as contingent, unliquidated and/or disputed and did not timely file proofs of claim.

In addition, the debtor represents that she will amend the disclosure statement to describe the alleged settlement agreements with certain claimholders. The debtor also must clarify the source of the funding for each of the agreements and whether the estate remains liable to any party on account of the claims purportedly settled. The debtor should attach the written agreements to any amended disclosure statement.

To the extent that any settlement payments are to be made from estate assets, the debtor must obtain court approval of the settlement agreements, either prior to, or in connection with, plan confirmation.

The debtor indicates in the disclosure statement that her family may contribute to the plan if she is unable to make plan payments. However, the debtor has not submitted any declarations by family members in which the relevant family member agrees to make such payments and provides sufficient evidence of his or her ability to do so. Regarding the ability of a family member to make plan payment contributions, with

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

the amended disclosure statement, the debtor must provide documentary evidence to demonstrate the ability of a family member to make plan payment contributions.

In her projection of monthly income attached to the disclosure statement, the debtor includes rental income. Regarding real properties that are the subject of entered sale orders, the debtor must provide amended projections which omit that rental income and the related real property expenses.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#25.30** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17; 5/17/18; 6/7/18; 7/5/18

Docket 1

**Tentative Ruling:**

On July 16, 2018, the chapter 11 trustee's accountant, Kailey Wright, filed a declaration (the "Wright Declaration") [doc. 276]. In the Wright Declaration, Ms. Wright lists documents that Ms. Wright has not received from the debtor. Ms. Wright also notes that the debtor did not provide Ms. Wright access to electronic records. The debtor should be prepared to discuss these issues.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:99-12461 Joseph Walter Jackson and Katherine Esther Jackson**

**Chapter 7**

**#26.00** Trustee's Motion for Order: (A) Authorizing sale of assets of the Debtor's bankruptcy estate, free and clear of liens, claims and encumbrances; and (B) Approving overbid procedure

Docket 364

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Joseph Walter Jackson

Represented By  
Ronald E Michelman

**Joint Debtor(s):**

Katherine Esther Jackson

Represented By  
Ronald E Michelman

**Trustee(s):**

Byron Z. Moldo (TR)

Pro Se

Byron Z. Moldo (TR)

Pro Se

Byron Z Moldo

Represented By  
Peter A Davidson

Amy L Goldman (TR)

Represented By  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:15-10698 Rene A Altevain**

**Chapter 7**

**#27.00** Chapter 7 Trustee's Objection to Claim No. 3-1  
filed by Best Western Plus Ruby's Inn

Docket 47

**Tentative Ruling:**

Sustain.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Rene A Altevain

Represented By  
Jeffrey N Wishman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Peter A Davidson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:15-10698 Rene A Altevain**

**Chapter 7**

**#28.00** Chapter 7 Trustee's Objection to Claim No. 4-1 filed by  
Bryce View Lodge

Docket 48

**Tentative Ruling:**

Sustain.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Rene A Altevain

Represented By  
Jeffrey N Wishman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Peter A Davidson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

2:00 PM

1:17-10830 ColorFX, Inc.

Chapter 11

#29.00 Official Committee of Unsecured Creditors of ColorFX, Inc.'s Motion objecting to claim No. 22-1

Docket 190

**Tentative Ruling:**

The Court will sustain the objection (the "Objection") [doc. 190] filed by the Official Committee of Unsecured Creditors (the "Committee") to claim 22-1 (the "Claim"), filed by Raymond Davidian ("Claimant").

***Background***

On March 31, 2017, ColorFX, Inc. (the "Debtor") filed a voluntary chapter 11 petition. On March 31, 2017, the Debtor filed its *Expedited First Day Motion for (1) Interim and Final Orders Approving Stipulation to Use Cash Collateral and Setting Final Hearing; (2) Approving Sale Procedures; (3) Authorizing Payment of Prepetition Non-Insider Payroll and Honor Employment Procedures and Taxes; and (4) Limiting Notice* (the "First Day Motions") [doc. 3]. In the First Day Motions, the Debtor proposed, among other things, to pay pre-petition payroll subject to priority under 11 U.S.C. § 507(a)(4), including \$680 owing to Claimant. (Doc. 3, at p. 137.) In its schedules, the Debtor listed Claimant as holding a priority unsecured, contingent claim in the amount of \$5,644.00. (Doc. 39, at p. 14.) On April 14, 2017, the Court entered orders granting the First Day Motions [docs. 26–30].

On May 31, 2017, the Court entered its *Order Setting Bar Date for Filing Proofs of Claim [FRBP 3003(c)(3); LBR 3003-1]* (the "Bar Date Order") [doc. 76]. The Bar Date Order set July 31, 2017 as the deadline for filing proofs of claim. On May 31, 2017, the Debtor filed and served the Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case [LBR 3003-1] (the "Bar Date Notice") [doc. 73]. The Bar Date Notice stated the claims bar date of July 31, 2017. The proof of service attached to the Bar Date Notice indicates that Claimant was served with the Bar Date Notice. (Doc. 73, at p. 11.)

On August 1, 2017, Claimant filed a proof of claim in the amount of \$7,500, asserting that this amount was secured and a priority claim under § 507(a)(4) (the "Claim").

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**ColorFX, Inc.**

**Chapter 11**

(Doc. 190, Exh. 1.) Claimant asserts that his claim is secured by "Business Equipment and tools in custody of Debtor[.]" (*Id.*, at p. 2.) Attached to the proof of claim are the following:

- A letter dated July 24, 2015, stating that Claimant's hourly wage is \$21.25;
- A termination letter from the Debtor and informing Claimant that the amount owed to him was \$662.37, for regular hours of work and post-petition accrued vacation hours for the period of June 19–20, 2017;
- A copy of the stub for the final check; and
- A copy of a pay stub for the Claimant from the Debtor, for the periods April 27–May 10, 2009, June 5–18, 2017, and June 19–20, 2017.

Claimant also alleges that he was promised but never paid for vacation hours, overtime, and special bonuses, and "act(s) of overt Fraud and Deception with regard to payment of money(ies)" owed to Claimant. (*Id.*, at p. 5.)

***Discussion***

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT... ColorFX, Inc.**

**Chapter 11**

164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

As an initial matter, Claimant was properly served with the Bar Date Notice. The Claim was filed after the claims bar date of July 31, 2017. Consequently, the Claim is subject to disallowance pursuant to 11 U.S.C. § 502(b)(9).

In the Objection, the Committee contends that the evidence attached to the Claim does not support the amount of the Claim. Claimant's hourly rate of \$21.25 does not divide evenly into \$7,500. In addition, Claimant was paid his wages and accrued vacation time pursuant to the termination letter. The Committee further contends that Claimant has not provided evidence of the Claim's priority or secured status. As for priority wages pursuant to 11 U.S.C. § 507(a)(4), such wages were already paid to Claimant pursuant to the First Day Motions.

In response to the Objection, Claimant has not met his burden of persuasion as to the validity of the Claim. Claimant has not provided evidence of any different promise by the Debtor other than that contained in the termination letter, or of any fraud or deception by the Debtor. Claimant also has not provided evidence of the priority or secured status of the Claim.

***Conclusion***

In light of the foregoing, the Court will disallow the Claim.

The Committee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#30.00 Debtors' Motion to Apportion Sale Proceeds Among Debtors**

Docket 317

**Tentative Ruling:**

In light of the assets identified in the schedules filed in the Hampton Heights, Inc. case [1:17-bk-11545-VK, doc. 14], and the issues raised in the opposition to the motion [doc. 333], the Court intends to set an evidentiary hearing to determine the amount of the sale proceeds that are properly apportioned to the estate of Hampton Heights, at which time the debtors' principal may be cross-examined concerning her allocation assessment.

The parties should be prepared to discuss the setting of such a hearing.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**Movant(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Jeffrey S Shinbrot  
Amelia Puertas-Samara  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#31.00** Application to employ Illyssa I. Fogel of Illyssa I. Fogel & Associates as Attorney for Debtor

fr. 3/29/18; 5/10/18

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order on application entered on 4/26/18 [doc. 56].**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#32.00** Motion for protective order of application for the Rule 2004 Examination and the production of documents pursuant to Bankruptcy Rule 2004 of Deborah Lois Adri

fr. 6/7/18

Docket 76

**Tentative Ruling:**

The Court intends to continue this matter to **August 23, 2018 at 2:00 p.m.**

On June 3, 2018, the Court entered an order granting the motion filed by Schuller & Schuller ("Creditor") to extend time to file a complaint under 11 U.S.C. § 523 and/or to deny a discharge (the "Order Extending Time") [doc. 120]. The Order Extending Time provided that Creditor's deadline to file such complaint is August 20, 2018.

On June 7, 2018, the Court previously continued this matter and instructed the parties to file a joint stipulation pursuant to Local Bankruptcy Rule 7026-1(c)(3) as to the parties' dispute regarding:

- Creditor's *Application for The 2004 Examination and the Production of Documents Pursuant to Bankruptcy Rules 2004 of Deborah Lois Adri* [doc. 68]; and
- the *Emergency Motion For Protective Order Of Application For The Rule 2004 Examination And The Production Of Documents Pursuant To Bankruptcy Rule 2004 Of Deborah Lois Adri* (the "Motion") [doc. 76] filed by Deborah Lois Adri (the "Debtor").

On June 28, 2018, the parties timely filed their joint stipulation (the "Stipulation") [doc. 115].

On July 13, 2018, Creditor filed proof of claim no. 9 (the "Claim"). On July 17, 2018, the Debtor filed an objection to the Claim (the "Objection") [doc. 123]. The hearing on the Objection is set for August 23, 2018 at 2:00 p.m. On July 17, 2018, the Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

filed a supplemental statement to the Motion (the "Supplemental Statement") [doc. 126].

In light of the Stipulation, the Claim, the Objection, and the Supplemental Statement, the Court intends to continue the hearing on the Motion to **August 23, 2018, at 2:00 p.m.**, to coincide with the hearing on the Objection. Because the Objection may be overruled, the Court also will extend the deadline stated in the Order Extending Time to **September 24, 2018**.

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#33.00** Motion for order extending Debtors exclusivity periods to file Chapter 11 Plan and solicit acceptances thereto

Docket 109

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, July 19, 2018

Hearing Room 301

2:00 PM

1:18-10694 Charles Hung Ngo

Chapter 7

#34.00 Debtor's Motion to dismiss chapter 7

Docket 12

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On March 19, 2018, Charles Hung Ngo ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

In his schedule A/B, Debtor listed an interest in the real property located at 10329 Glade Avenue, Chatsworth, California 91311 (the "Property"). Debtor valued the Property at \$420,000. In his schedule D, Debtor listed a deed of trust encumbering the Property in the amount of \$330,000. In his schedule C, Debtor claimed a homestead exemption in the Property in the amount of \$90,000, i.e., the remaining equity in the Property.

In his schedule A/B, Debtor also listed \$5,600 in personal property, including an interest in \$3,000 in funds held in an account with Bank of America (the "Funds"). Debtor claimed the Funds as exempt, and also claimed as exempt an additional \$1,000 in personal property. In his schedule E/F, Debtor listed a total of \$55,000 in unsecured claims.

On June 4, 2018, Debtor attended a continued § 341(a) meeting of creditors. Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 18], ¶ 6. At that time, the Trustee asked Debtor to turn over the Funds to the estate. *Id.* The Trustee also asserts that Debtor has an interest in tax refunds from Debtor's 2016 tax filing in the amount of \$4,134 (the "Tax Refund"), which Debtor did not list in his schedule A/B. Gottlieb Declaration, ¶ 4.

On June 22, 2018, Debtor filed a motion to dismiss this bankruptcy case (the "Motion") [doc. 12]. In the Motion, Debtor asserts that he mistakenly overvalued the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Charles Hung Ngo**

**Chapter 7**

Property in his schedules. Debtor also states that he is facing financial and medical hardship, and would like to negotiate with creditors outside of bankruptcy.

On June 28, 2018, the Trustee filed a motion for turnover (the "Turnover Motion") [doc. 18], requesting turnover of the Funds and the Tax Refund. On July 5, 2018, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 21]. To the Opposition, the Trustee attached a declaration by an appraiser valuing the Property between \$610,000 and \$650,000. The Trustee asserts that his administration of this estate will result in full payment to all unsecured creditors. On July 9, 2018, the Trustee filed a Notice of Assets [doc. 22]. Debtor has not timely filed a reply to the Opposition.

## II. ANALYSIS

Under 11 U.S.C. § 707—

(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;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

This list is non-exclusive. *See In re Motaharnia*, 215 B.R. 63, 68 (Bankr. C.D. Cal. 1997). "[A] voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no 'legal prejudice' to interested parties." *In re Leach*, 130 B.R. 855, 857 (B.A.P. 9th Cir. 1991) (citing *In re International Airport Inn Partnership*, 517 F.2d 510, 512 (9th Cir. 1975)); *see also In re Bartee*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). "Debtors bear the burden of proving that dismissal would not prejudice their creditors." *Bartee*, 317 B.R. at 366.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Charles Hung Ngo**

**Chapter 7**

Here, Debtor provides two reasons why he is seeking dismissal of this case. First, Debtor states that he mistakenly overvalued the Property in his schedules. However, Debtor does not provide any evidence, such as an appraisal, demonstrating that the Property is worth less than Debtor initially believed. On the other hand, the Trustee has provided a declaration by an appraiser estimating the value of the Property at \$610,000 to \$650,000. This valuation would pay Debtor's creditors in full if the Trustee decides to sell the Property. Moreover, Debtor has yet to turn over the Tax Refund, which Debtor apparently did not list in his schedules. As such, there may be additional assets available for distribution. At the least, it is best to wait until the Trustee can market the Property to determine if there will be any equity in the Property available to pay creditors.

Debtor's second reason for requesting dismissal is that he is suffering financial and medical hardship, and prefers that his attorney negotiate with creditors outside of bankruptcy. However, as noted by the Trustee, such hardship would prevent Debtor from pursuing negotiations with his creditors, especially after losing the benefit of the automatic stay. Moreover, creditors will not benefit from a race to the courthouse after dismissal. At this time, with the possibility of being paid in full through this case, Debtor has not demonstrated that creditors will not be prejudiced if this case is dismissed.

### **III. CONCLUSION**

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Charles Hung Ngo

Represented By  
Thomas K Emmitt

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10694 Charles Hung Ngo**

**Chapter 7**

**#35.00** Motion for turnover of property of the estate

Docket 18

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On March 19, 2018, Charles Hung Ngo ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

In his schedule A/B, Debtor listed an interest in a Bank of America checking account with \$3,000 in funds (the "Funds"). Debtor also indicated that he is not owed any tax refunds. However, Debtor's 2016 federal tax return reflected a tax refund of \$4,134 (the "Tax Refund"). Declaration of David K. Gottlieb (the "Gottlieb Declaration") [doc. 18], ¶ 4.

On June 4, 2018, at the continued § 341(a) meeting of creditors, the Trustee requested that Debtor turn over the Funds and the Tax Refunds to the estate. Gottlieb Declaration, ¶¶ 5-7. Debtor did not comply with the Trustee's request. *Id.*

On June 22, 2018, Debtor filed a motion to dismiss this bankruptcy case (the "Motion to Dismiss") [doc. 12]. On June 28, 2018, the Trustee filed a motion for turnover (the "Motion"), requesting turnover of the Funds and the Tax Refund [doc. 18]. On July 12, 2018, Debtor belatedly filed an opposition to the Motion (the "Opposition") [doc. 24]. In the Opposition, Debtor does not discuss the Funds or the Tax Refund. On the same day, the Trustee filed a reply to the Opposition [doc. 25].

**II. ANALYSIS**

Pursuant to 11 U.S.C. § 541—

(a) The commencement of a case under section 301, 302, or 303 of this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Charles Hung Ngo**

**Chapter 7**

title creates an estate. Such estate is comprised of all the following property, 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.

Pursuant to 11 U.S.C. § 542—

- (a) 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 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.

Here, Debtor does not dispute that the Funds or the Tax Refund are property of the estate. In fact, Debtor does not discuss the Funds or the Tax Refund in the Opposition at all. In addition to these assets being property of the estate, the Trustee notes that he intends to use the Funds and the Tax Refund in accordance with § 363. As a result, the Funds and the Tax Refund are not of "inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

Because the Court will not be dismissing this bankruptcy case at this time, Debtor must turn over the Funds and the Tax Refund to the Trustee. To the extent Debtor would like to convert this case to one under chapter 13, Debtor may file a separate motion to convert the case.

### **III. CONCLUSION**

The Court will grant the Motion. Debtor must turn over the Funds and the Tax Refund to the Trustee no later than **14 days** from entry of the order granting this Motion.

The Trustee must submit an order within seven (7) days.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Charles Hung Ngo**

**Chapter 7**

**Debtor(s):**

Charles Hung Ngo

Represented By  
Thomas K Emmitt

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Carmela Pagay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 19, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#36.00** Motion of Debtor for entry of an order authorizing the lease of real property located at 23311 Park Soldi, Calabasas, CA

Docket 42

**Tentative Ruling:**

Pursuant to 11 U.S.C. § 363(b)(1), "[t]he *trustee*... may use, sell, or lease, other than in the ordinary course of business, property of the estate...." (emphasis added). In accordance with 11 U.S.C. § 1107(a), the debtor in possession may perform these functions.

Here, the Interim Occupancy Agreement ("IOA") is between the debtor in possession's non-debtor spouse and the tenant. The debtor is not listed as a landlord. In order for the Court to grant the motion, the parties must amend the IOA to include the debtor in possession as a co-landlord.

What is the status of the filing of a motion to approve the sale of the property?

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, July 25, 2018

Hearing Room 301

9:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#1.00 Motion for relief from stay [RP]

301  
VS  
DEBTOR

Docket 7

\*\*\* VACATED \*\*\* REASON: Motion is not in compliance with Local  
Bankruptcy Rule 5005-2(d)(1). Motion is OFF CALENDAR.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 25, 2018

Hearing Room 301

9:30 AM

1:18-11463 Jason Noguera

Chapter 13

#2.00 Motion for relief from stay [UD]

SHELDON BAER, TRUSTEE OF THE BAER FAMILY TRUST  
VS  
DEBTOR

**Case dismissed on 7/19/18**

Docket 10

**Tentative Ruling:**

This case was dismissed on July 19, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

Also, grant the relief requested in paragraph 11 ("eleven").

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jason Noguera

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, July 25, 2018

Hearing Room 301

9:30 AM

1:13-17265 Alma Delia Marquez and Oscar Adolfo Marquez

Chapter 13

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORP  
VS  
DEBTOR

Docket 55

**Tentative Ruling:**

Grant on the terms requested. No appearance required.

**Party Information**

**Debtor(s):**

Alma Delia Marquez

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Oscar Adolfo Marquez

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 25, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10470 Steven William Tam and Boriana Blagoeva Tam**

**Chapter 13**

**#4.00 Motion for relief from stay [PP]**

TOYOTA MOTOR CREDIT CORP  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant on the terms requested. No appearance required.

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

**Debtor(s):**

Steven William Tam

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Boriana Blagoeva Tam

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, July 25, 2018

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#5.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

Docket 101

\*\*\* VACATED \*\*\* REASON: Motion is not in compliance with Local  
Bankruptcy Rule 5005-2(d)(1). Motion is OFF CALENDAR.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards - SUSPENDED BK -

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se





**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 25, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11480 Safi Noorzad**

**Chapter 13**

**#6.10** Motion for relief from stay [RP]

JPMORGAN CHASE BANK N.A.  
VS  
DEBTOR

fr. 7/11/18

Docket 18

**\*\*\* VACATED \*\*\* REASON: APO entered 7/12/18 [doc. 24]**

**Tentative Ruling:**

**Tentative ruling from 7/11/18**

Grant on the terms requested. No appearances required.

**Party Information**

**Debtor(s):**

Safi Noorzad

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, July 25, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#7.00 Motion for relief from stay [RP]**

JPMORGAN CHASE BANK, N.A.  
VS  
DEBTOR

Docket 29

**Tentative Ruling:**

Deny the motion if debtor commences making monthly payments to creditor of \$5,350 by August 1, 2018.

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

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 26, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#1.00** Status conference re chapter 11 case

fr. 7/5/18

Docket 0

**Tentative Ruling:**

In light of the status report filed by the chapter 11 trustee [doc. 62], the Court will continue this status conference to **1:00 p.m. on August 9, 2018.**

Appearances are excused on July 26, 2018.

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

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, July 26, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#2.00** Motion of Debtor for entry of an order authorizing the lease of  
real property located at 23311 Park Soldi, Calabasas, CA

fr. 7/19/18

Docket 42

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 7/25/18.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, July 30, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18; 7/16/18

Docket 1

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, July 31, 2018**

**Hearing Room 301**

9:30 AM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #1.00** Trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18; 7/16/18

Docket 1

**Party Information**

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11349 Nadezhda V Luneva**

**Chapter 7**

**#1.00 Motion for relief from stay [PP]**

TOYOTA MOTOR CREDIT CORP  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Nadezhda V Luneva

Represented By  
Christopher J Langley

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11432 Anusha Gerard Silva**

**Chapter 7**

**#2.00 Motion for relief from stay [RP]**

BANK OF AMERICA, N.A.  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Anusha Gerard Silva

Represented By  
Henrik Mosesi

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#3.00** Motion for relief from stay [PP]  
(2015 Ford Flex)

CAB WEST, LLC  
VS  
DEBTOR

**Stip filed 7/30/18**

Docket 34

**\*\*\* VACATED \*\*\* REASON: Order entered 7/30/18 cont matter to 8/22/18  
@ 9:30am.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#4.00** Motion for relief from stay [PP]  
(2017 Ford Flex)

CAB WEST, LLC  
VS  
DEBTOR

**STIP filed 7/30/18**

Docket 35

**\*\*\* VACATED \*\*\* REASON: Order entered 7/30/18 cont matter to 8/22/18  
@ 9:30am.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 39

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Lazar Levitan

Represented By  
Raj T Wadhvani

**Joint Debtor(s):**

Catherine Palmerino Levitan

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:16-12590 Douglas Tucker**

**Chapter 13**

**#6.00 Motion for relief from stay [RP]**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 45

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Douglas Tucker

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10211 Haysun Chang**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

Docket 34

**\*\*\* VACATED \*\*\* REASON: No chambers copy of motion provided.  
Motion is not on calendar.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Haysun Chang

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11729 Richard Philip Dages**

**Chapter 11**

**#8.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

**Tentative Ruling:**

Grant on an interim basis and continue the hearing to **September 12, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed.

***The Debtor's Prior Cases***

Between 2000 and 2017, Richard Philip Dages (the "Debtor") filed the following cases:

Case No.	Chapter	Date Filed	Disposition
1:00-bk-17554-AG	7	8/18/2000	Dismissed on 9/8/2000 with 180-day bar for failure to file schedules, statements, and/or plan
1:01-bk-16615-AG	7	7/10/2001	Dismissed 7/26/2001 with 180-day bar for failure to file schedules, statements, and/or plan
1:12-bk-18250-AA	13	9/17/2012	Dismissed on 12/06/2012 arising from confirmation hearing
1:13-bk-10055-AA	13	1/3/2013	Dismissed on 4/3/2013 for failure to make plan payments and/or appear at 341(a) meeting

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Richard Philip Dagnes**

**Chapter 11**

1:14-bk-10331-AA	13	1/22/2014	Dismissed on 3/31/2014 for failure to make plan payments and/or appear at 341(a) meeting
1:15-bk-11761-VK	13	5/19/2015	Dismissed on 10/14/2015 arising from confirmation hearing
1:17-bk-13261-MT	13	12/6/2017	Dismissed on 3/29/2018 arising from confirmation hearing

On December 6, 2017, the Debtor filed his most recent case, 1:17-bk-13261-MT (the "Prior Case"), *in pro per*. In the Prior Case, the Debtor listed as his residence the real property located at 16815 Parthenia Street, Northridge, CA 91343 (the "Property"). (Doc. 1, at p. 2.) The Debtor listed the Property in his schedules with a value of \$800,000. (Doc. 19, at p. 5.) Nationstar/Mr. Cooper ("Creditor") was listed as the holder of claim secured by the Property, in the amount of \$1,173,249. (*Id.*, at p. 16.) The Debtor also listed monthly income of \$3,353 and monthly expenses of \$2,207, leaving net monthly income of \$1,146. (*Id.*, at p. 30.) In his amended chapter 13 plan filed in the Prior Case, the Debtor's proposed plan payment was \$212.50 per month. (Doc. 36, at p. 3.) On March 29, 2018, the Prior Case was dismissed because the Debtor exceeded the chapter 13 debt limits set forth in 11 U.S.C. § 109(e) [doc. 38]. (*See also* Declaration of Richard Philip Dagnes, doc. 6, ¶ 4.)

***The Debtor's Pending Chapter 11 Case***

On July 10, 2018, the Debtor filed a voluntary chapter 11 petition, commencing the pending case. In his petition, the Debtor lists his residence as 13350 Dyer Street, Sylmar, CA 91342. The Debtor lists the Property in his schedules as having a value of \$810,000. (Doc. 1, at p. 16.) Creditor is listed as the holder of claim secured by the Property, in the amount of \$1,400,000. (*Id.*, at p. 24.) In his pending case, the Debtor's alleged monthly income is \$11,740.33 and his alleged monthly expenses are \$10,060, leaving net monthly income of \$1,680.33.

On July 11, 2018, the Debtor filed the pending motion to continue the automatic stay in his case (the "Motion") [doc. 6]. Through the Motion, the Debtor seeks to continue the automatic stay as to the Property as to all creditors. In support of the Motion, the Debtor alleges that the Property is a rental property, and that he will be using the rents

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Richard Philip Dages**

**Chapter 11**

to fund a chapter 11 plan. The Debtor intends to file a motion to use cash collateral generated from the Property. (Declaration of Richard Philip Dages, doc. 6, ¶¶ 5-7.)

On July 18, 2018, Creditor filed a timely opposition (the "Opposition") [doc. 10]. No declaration was attached to the Opposition. Creditor argues that the Debtor filed the pending case in bad faith to delay a foreclosure sale. There has not been a substantial change in the Debtor's financial condition since the filing of the last case. The Debtor no longer lives in the property at issue, which is being rented out to circumvent 11 U.S.C. § 1123(b)(5). Creditor is the only secured creditor listed in the Debtor's schedules, and six unsecured creditors are listed. The Debtor's prior schedules are inconsistent with his current schedules, and the Debtor appears to have "squared away" his income to provide appropriate net income. The Debtor has filed a lawsuit against Creditor but has not scheduled the lawsuit. The Debtor's latest bankruptcy case was filed to delay foreclosure on a note that has been contractually due for 8 years. There would be no prejudice to the Debtor if the Motion is denied because there is no equity in the Property.

On July 25, 2018, the Debtor filed a timely reply [doc. 16]. The Debtor contends that he moved out of the Property because it is being remodeled. Only 50% of the Property is being rented because that is the part that is not under construction. The present case was filed in good faith because the Debtor has obtained chapter 11 counsel and intends to reorganize through a chapter 11 plan. The Debtor's prior case was dismissed because the Debtor exceeded the chapter 13 debt limit. The Debtor has amended his schedules to reflect the lawsuit against Creditor. According to the Debtor, the other issues raised by Creditor can be dealt with during the plan confirmation process.

In light of the foregoing, the Court will grant the Motion on an interim basis up to the date of the continued hearing, provided that **no later than August 15, 2018**, the Debtor (i) tenders his August 2018 deed of trust payment to Creditor in the amount of \$4,200 (as stated in his current schedule J) as to the Property. **No later than August 29, 2018**, the Debtor must file a declaration to demonstrate that he made this payment. **No later than August 8, 2018**, the Debtor must also file and serve notice of the continued hearing on *all* creditors and provide written notice that any responses to the Motion must be filed no later than August 29, 2018.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Richard Philip Dages**

**Chapter 11**

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Richard Philip Dages

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #8.10** Pretrial conference re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18; 4/11/18; 6/6/18; 7/18/18

Docket 30

**Tentative Ruling:**

On July 20, 2018, the defendants filed their witness and exhibit lists [doc. 64]. In light of this filing, the Court will enter an order approving the parties' joint pretrial stipulation [doc. 57] and incorporating the defendants' witness and exhibit lists.

Appearances are excused on August 1, 2018.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#9.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip); 5/2/18(stip); 6/6/18(stip);  
7/18/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 6/21/18 continuing hearing to  
9/5/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#9.10** Status conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18; 7/18/18

Docket 1

**\*\*\* VACATED \*\*\***

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah

**#10.00** Order to show cause re: remand

from: 6/6/18

Docket 2

**Tentative Ruling:**

The Court will not remand this adversary proceeding. Bankruptcy courts have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the 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 (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pegasus Gold Corp.*, 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

Here, the Court has "related to" jurisdiction over both the complaint and the cross-complaint. In accordance with the Court's order confirming the debtor's chapter 13 plan [Bankruptcy Docket, doc. 29], the plaintiff's bankruptcy estate remains intact until the plaintiff receives a discharge or the bankruptcy case is dismissed or closed without discharge. As such, the litigation of either the complaint or the cross-complaint will impact the plaintiff's bankruptcy estate.

If the plaintiff successfully prosecutes this action, the plaintiff will recover money into the estate that may be used in the plaintiff's reorganization efforts. On the other hand, if the defendant successfully prosecutes his cross-complaint, the subject property will no longer be property of the estate, and the plaintiff likely will modify his chapter 13

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ali P Dargah**

**Chapter 13**

plan. Because of the potential impact of both the complaint and the cross-complaint on the estate and on the chapter 13 plan, the Court has "related to" jurisdiction over this matter.

Contrary to the Court's Order to Show Cause re: Remand [doc. 2], the parties did not file a joint status report. Moreover, in the Notice of Removal, the plaintiff indicates that he intends to file an amended complaint. The parties should be prepared to discuss dates and deadlines moving forward, including a deadline for the plaintiff to file an amended complaint, a deadline for the parties to submit a joint status conference and a date for a continued status conference.

**Party Information**

**Debtor(s):**

Ali P Dargah

Represented By  
Kevin T Simon

**Defendant(s):**

Jeff Javad Dargah

Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

Adv#: 1:18-01064 Justice Federal Credit Union v. Franckaert Mendoza

**#11.00** Status conference re: complaint to determine dischargeability of a debt

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:30 p.m. on October 17, 2018.**

Appearances are excused on August 1, 2018.

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

**Debtor(s):**

Francois E. Franckaert Mendoza

Represented By  
Elena Steers

**Defendant(s):**

Francois E. Franckaert Mendoza

Pro Se

**Plaintiff(s):**

Justice Federal Credit Union

Represented By  
Robert S Lampl

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#12.00** Motion to compel further responses to requests for production of documents, interrogatories and request for admissions

Docket 26

**Tentative Ruling:**

Forum Entertainment Group, Inc. ("Plaintiff") requests that the Court compel Robin DiMaggio ("Defendant") to furnish further responses to Plaintiff's request for production of documents, interrogatories and requests for admission.

To the extent set forth below, at this time, the Court will compel Defendant to furnish further responses to Plaintiff's request for production of documents and interrogatories.

Regarding Plaintiff's requests for admission, the Court will continue the hearing to **2:30 p.m. on September 5, 2018.**

**I. BACKGROUND**

On September 12, 2017, Defendant filed a voluntary chapter 7 petition. On December 19, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), seeking denial of discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5) and nondischargeability of the debt owed to it under 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6). On January 26, 2018, Defendant filed an answer to the Complaint (the "Answer") [doc. 10].

On March 19, 2018, the Court entered a scheduling order setting May 31, 2018 as the discovery cutoff date [doc. 14]. On May 31, 2018, the parties filed a stipulation to extend the deadlines from the Court's scheduling order [doc. 16]. The Court entered an order approving the stipulation and setting July 16, 2018 as the new discovery cutoff date [doc. 24].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

On March 28, 2018, Plaintiff served Defendant 67 requests for production of documents, 25 interrogatories and 112 requests for admission. Motion [doc. 26], Exhibits A-C. On May 4, 2018, Defendant sent his handwritten responses to Plaintiff. Motion, Exhibits D-F. In his responses, Defendant either referred Plaintiff to other people or stated that he did not understand the request. *Id.*

On May 31, 2018, Plaintiff emailed and mailed Defendant a meet and confer letter (the "Letter"), setting forth the responses which Plaintiff believed were insufficient. Motion, Exhibit G. On June 15, 2018, Defendant mailed back the Letter to Plaintiff and included handwritten responses under and beside the paragraphs. Motion, Exhibit H. Once again, Defendant referred Plaintiff to third parties or stated that he does not understand the request. *Id.*

On July 2, 2018, Plaintiff filed a motion to compel supplemental responses to Plaintiff's discovery requests (the "Motion") [doc. 26]. On July 9, 2018, Defendant filed a response to the Motion [doc. 31].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1), the scope of discovery is as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

As a preliminary matter, the Court will not require Defendant to provide typewritten responses. Plaintiff has not cited authority that stands for the proposition that parties are prohibited from providing handwritten responses to discovery. Although the Court will not compel Defendant to provide typewritten responses, the Court will compel Defendant to provide supplemental responses for the reasons stated below.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

*A. Requests for Production*

Rule 34(a)(1)(A) states -

A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items **in the responding party's possession, custody, or control**: (A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably useable form.

(Emphasis added.)

**"A party need not have actual possession of documents to be deemed in control of them."** *Ruiz v. XPO Last Mile, Inc.*, 2016 WL 6781521, at \*4 (S.D. Cal. Feb. 22, 2016) (internal quotation and citation omitted). **"A party may be deemed in control of a document if it has the legal right to obtain it from a third party upon demand."** *Id.* (citing *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)). "The relationship between the party and the person or entity having actual possession of the document is central in each case.... This position of control is usually the result of statute, affiliation or employment." *Estate of Young Through Young v. Holmes*, 134 F.R.D. 291, 294 (D. Nev. 1991). "If defendant does not have the legal right to obtain and produce copies of relevant manifests, plaintiff is entitled to know why." *Ruiz*, 2016 WL 6781521, at \*5.

In his responses to Plaintiff's requests for production, Defendant instructs Plaintiff to obtain the documents from various other sources, namely, Defendant's accountant, Defendant's bank, the state court which presided over Defendant's divorce proceeding, Defendant's bankruptcy attorney or Steve Yu.

Even if Defendant does not currently have possession of the requested documents, Defendant has not explained why Defendant cannot get them from someone who

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

does. Has Defendant requested copies of these documents from his accountant, his bank, his attorney and others?

Moreover, in his response to the Letter, Defendant states that he lost his storage unit and cannot access documents that are responsive to requests for production nos. 1-9, 11, 21 and 30-31. Does Defendant have a contract with the storage unit or any other evidence that shows that Defendant was storing these documents in a storage unit? Is Defendant unable to obtain the documents in any other way, such as by asking his accountant?

**If Defendant, after making a good faith effort to obtain these documents, is unable to access the documents, Defendant must clearly explain the steps he took to obtain the documents and why he was unable to obtain the requested documents.**

As to the requests for production nos. 33-46, 48-67, Defendant asserts that he does not understand the requests. Through these requests for production, Plaintiff is asking for any documents that support Defendant's denials and affirmative defenses in the Answer. Specifically, Plaintiff is requesting as follows:

**i. Request for Production No. 33**

In paragraph 9 of the Complaint, Plaintiff alleges that Mr. Yu introduced Plaintiff to Defendant, and that Defendant represented to Plaintiff that Defendant could secure musical performances by Will.I.Am and Pitbull for a concert. Plaintiff also alleges that Defendant included these representations on his website. In the Answer, Defendant states that he denies the allegations "in part."

Defendant must first explain *which* part of paragraph 9 Defendant denies. Next, in response to this request for production, Defendant must provide any documents he has, or can obtain on his request, that indicate why any of the allegations in paragraph 9 are wrong.

**If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

documents responsive to this request."

**ii. Request for Production Nos. 34-35**

In paragraphs 10 and 11 of the Complaint, Plaintiff alleges that, in May 2012, Defendant gave Plaintiff a budget sheet that showed he was able to obtain performances by Will.I.Am and Pitbull and get discounted rates for the concert. Plaintiff further alleges that, after Plaintiff received this budget sheet, Plaintiff agreed to hire Defendant's company to secure performances by various artists. Plaintiff also alleges that Defendant sent Plaintiff various emails and oral confirmations regarding these performances. In the Answer, Defendant states that he denies the allegations in paragraphs 10 and 11.

Defendant must provide any documents that show why Defendant believes that these allegations are wrong, such as emails, any written communications with Plaintiff, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**iii. Request for Production Nos. 36-37**

In paragraphs 12 and 13 of the Complaint, Plaintiff alleges that, on May 5, 2012, Plaintiff gave Defendant \$50,000 in cash to secure a performance by Will.I. Am and, on May 8, 2012, Plaintiff gave Defendant \$50,000 to secure a performance by Pitbull. In the Answer, Defendant denies the allegations in paragraphs 12 and 13 "in part."

Defendant must first explain *which* part of paragraphs 12 and 13 Defendant denies. Next, in response to these requests for production, Defendant must provide any documents that show why any of the allegations in these paragraphs are wrong. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT...

Robin DiMaggio

Chapter 7

iv. Request for Production Nos. 38-39

In paragraphs 14 and 15 of the Complaint, Plaintiff alleges that Plaintiff asked Defendant about the status of the concert and that Defendant told Plaintiff he was waiting for confirmation from Will.I.Am and Pitbull. Plaintiff also alleges that Defendant asked for additional money to secure the performance of The Michael Jackson Band and that, on June 11, 2012, Plaintiff gave Defendant \$18,000. In the Answer, Defendant denies the allegations in paragraph 14 and denies the allegations in paragraph 15 "in part."

Defendant must first explain *which* part of paragraph 15 Defendant denies. Next, in response to these requests for production, Defendant must provide any documents that show why any of the allegations in these paragraphs are wrong, such as emails, any written communications, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

v. Request for Production Nos. 40-41

In paragraphs 17 and 18 of the Complaint, Plaintiff alleges that, in July 2012, Defendant asked Plaintiff for additional money to secure sound engineers and to give Defendant's company an advance on its brokering fees for the concert. Plaintiff alleges that, in response to both requests, Plaintiff asked Defendant about whether Defendant had confirmation from Will.I.Am and Pitbull and that, both times, Defendant told Plaintiff that confirmations were on their way. Plaintiff alleges that Plaintiff gave Defendant \$13,000 and \$15,000 for the sound engineers and the brokering fee, respectively. In the Answer, Defendant denies the allegations in both paragraphs.

Defendant must provide any documents that show why Defendant believes any of the allegations in these paragraphs are wrong. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

vi. Request for Production No. 42

In paragraph 19 of the Complaint, Plaintiff alleges that, between July 18, 2012 and July 29, 2012, Plaintiff tried to contact Defendant regarding whether Will.I.Am and Pitbull had confirmed that they would perform at the concert, and that Defendant did not respond to Plaintiff. Plaintiff also alleges that Defendant did not inform Plaintiff that he had not been able to secure the artists' performances and did not offer to return the \$100,000 Plaintiff had paid to Defendant. In the Answer, Defendant denies these allegations.

Defendant must provide any documents that show why Defendant believes any of the allegations in these paragraphs are wrong, such as emails or any other written communications showing responses by Defendant during this period. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."**

vii. Request for Production Nos. 43-44

In paragraphs 21 and 22 of the Complaint, Plaintiff alleges that Defendant admitted to Plaintiff that he was unable to hire Will.I.Am and Pitbull to perform and that Defendant had placed the \$100,000 Plaintiff gave to Defendant in Defendant's own personal bank account, which was frozen because of Defendant's divorce. Plaintiff also alleges that Defendant told Plaintiff that the concert could go forward with The Michael Jackson Band and other artists, and that, as a result, Plaintiff deposited \$123,890 with The Greek Theater. In the Answer, Defendant denies these allegations.

Defendant must provide any documents that show why Defendant believes any of the allegations in these paragraphs are wrong, such as emails or any other written communications, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

**viii. Request for Production No. 45**

In paragraph 25 of the Complaint, Plaintiff alleges that Defendant represented to Plaintiff that Defendant could bypass agent clearances. Plaintiff also alleges that, because Defendant knew he could not return any money to Plaintiff, Defendant suggested that Plaintiff continue its efforts to hold the concert and to plan a second concert. In the Answer, Defendant denies these allegations.

Defendant must provide any documents that show why Defendant believes any of the allegations in these paragraphs are wrong, such as emails or any other written communications. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**ix. Request for Production No. 46**

In paragraph 27 of the Complaint, Plaintiff alleges that Defendant convinced Plaintiff that Plaintiff should promote the concert on the radio and that Defendant could broadcast a promotion on radio station KIIS FM. Plaintiff alleges that, as a result, Plaintiff gave Defendant's company \$7,000 to use for radio promotion. In the Answer, Defendant denies these allegations.

Defendant must provide any documents that show why Defendant believes any of the allegations in these paragraphs are wrong, such as emails or any other written communications, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**x. Request for Production No. 48**

In paragraph 32 of the Complaint, Plaintiff alleges that Defendant has never paid back



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Robin DiMaggio**

Chapter 7

any of the funds Plaintiff gave to Defendant. In the Answer, Defendant states he "denies that a reimbursement of funds is owed."

Defendant must provide any documents that show why Defendant believes he does not owe Plaintiff money, such as any written agreements or emails, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xi. Request for Production No. 49**

In paragraph 26 of the Complaint, Plaintiff alleges that Defendant agreed to help Plaintiff secure performances for a second concert and, as a result, Plaintiff made three additional payments to Defendant's company in the total amount of \$17,500. In the Answer, Defendant denies these allegations "in part."

Defendant must first explain *which* statements in paragraph 26 that Defendant denies. Next, in response to this request for production, Defendant must provide any documents that show why any of these allegations are wrong, such as emails, any written communications, etc. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xii. Request for Production No. 50**

In paragraph 31 of the Complaint, Plaintiff alleges that, from October 2012 until the present, Plaintiff has repeatedly asked for a refund of the money Plaintiff paid Defendant. In the Answer, Defendant denies the allegations "in part."

Defendant must first explain *which* part of paragraph 31 Defendant denies. Next, in response to this request for production, Defendant must provide any documents that show why any of these allegations are wrong, such as emails, any written communications, etc. **If Defendant does not have in his possession, and cannot**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

**get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xiii. Request for Production No. 51**

Paragraph 36 of the Complaint concerns Defendant's alleged understatement of his debt to Plaintiff in Defendant's bankruptcy schedules, and Defendant's alleged failure to include in his Statement of Financial Affairs funds paid by Plaintiff as income or as property of someone else that Defendant holds or controls. The Court will not compel a further response to this Request for Production.

**xiv. Request for Production Nos. 52-55**

The Court will not compel a further response to these Requests for Production.

**xv. Request for Production No. 56**

The Court will not compel a further response to this Request for Production.

**xvi. Request for Production No. 57**

Through the Third Affirmative Defense in the Answer, Defendant states that Defendant has incurred damages from Plaintiff's conduct. What has Plaintiff done to damage Defendant? Does Defendant have any documents that show that Plaintiff has injured Defendant or that Plaintiff owes Defendant any money? If so, Defendant must provide those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xvii. Request for Production No. 58**

Through the Fourth Affirmative Defense in the Answer, Defendant states that Plaintiff has engaged in conduct that constitutes waiver. In other words, Defendant is alleging that Plaintiff has done something that would prevent Plaintiff from suing Defendant.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

---

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

What does Defendant believe Plaintiff has done that would result in Plaintiff being unable to sue Defendant? Does Defendant have any documents that demonstrate that Plaintiff has done something to prevent Plaintiff from suing Defendant? If so, Defendant must provide those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xviii. Request for Production No. 59**

Through the Fifth Affirmative Defense in the Answer, Defendant states that Plaintiff cannot sue Defendant because Plaintiff has breached an agreement with Defendant. Defendant also alleges that Plaintiff has engaged in "tortious conduct" and "unclean hands" and that "laches" bars Plaintiff from suing Defendant. Which agreement does Defendant believe Plaintiff breached? Regarding Defendant's allegation that Plaintiff committed "tortious conduct" and that Plaintiff has "unclean hands," what does Defendant believe Plaintiff did that was wrong? As to "laches," does Defendant believe Plaintiff waited too long to sue Defendant? If so, why?

If Defendant believes there is an agreement between the parties that Plaintiff breached, Defendant must provide any written agreement or any other documents that show that an agreement exists. If Defendant believes Plaintiff has done anything wrong towards Defendant, Defendant must provide any and all documents that would show what Plaintiff has done, such as any emails or other written communications. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xix. Request for Production No. 60**

Through the Sixth Affirmative Defense in the Answer, Defendant again states that Plaintiff has breached a contract. Which agreement does Defendant believe Plaintiff breached? How did Plaintiff breach this agreement? Does Defendant have any documents that would show that Plaintiff breached a contract? If so, Defendant must

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Robin DiMaggio**

Chapter 7

provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xx. Request for Production No. 61**

Through the Seventh Affirmative Defense in the Answer, Defendant states that Plaintiff has released Defendant of any liability. In other words, Defendant is asserting that Plaintiff did or said something to excuse Defendant from repaying Plaintiff. What did Plaintiff do or say to excuse Defendant from being liable to Plaintiff? Does Defendant have any documents that would show what Plaintiff did or said? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxi. Request for Production No. 62**

Through the Eighth Affirmative Defense in the Answer, Defendant asserts that Plaintiff is as responsible for the allegations in the Complaint as Defendant. Does Defendant have any documents that show what Plaintiff did or said that caused any of the allegations from the Complaint, such as Plaintiff's loss of money, the concert not going forward or the lack of confirmation to perform from the musical artists? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxii. Request for Production No. 63**

Through the Ninth Affirmative Defense in the Answer, Defendant asserts that Plaintiff did or said things, or failed to do or say things, that injured Defendant. What did

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

Plaintiff do or say, or fail to do or say, that harmed Defendant? Does Defendant have any documents that show what Plaintiff did or said and how Defendant was harmed? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxiii. Request for Production No. 64**

Through the Tenth Affirmative Defense in the Answer, Defendant asserts that Defendant fully performed under the parties' agreement. How does the Defendant believe he fully performed in accordance with the parties' agreement? Does Defendant have any documents that show that Defendant did everything he was supposed to do under the parties' contract? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxiv. Request for Production No. 65**

Through the Eleventh Affirmative Defense in the Answer, Defendant asserts that Plaintiff did things, or failed to do things, to minimize the amount of money Plaintiff lost. What does Defendant believe Plaintiff did or did not do to stop Plaintiff from losing money? Does Defendant have any documents that show what Plaintiff did or did not do to decrease damages? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxv. Request for Production No. 66**

Through the Thirteenth Affirmative Defense in the Answer, Defendant asserts that Plaintiff was not reasonable in believing what Defendant told Plaintiff. Why does

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

Chapter 7

Defendant believe Plaintiff should not have believed what Defendant told Plaintiff? Does Defendant have any documents that show why Plaintiff relying on Defendant was unreasonable? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

**xxvi. Request for Production No. 67**

Through the Fourteenth Affirmative Defense in the Answer, Defendant asserts that Plaintiff cannot sue Defendant because the Complaint is untimely. Given that Plaintiff alleges in the Complaint that Plaintiff first sued Defendant on September 6, 2013, i.e., within a year of the subject concert not going forward, why does Defendant believe that Plaintiff's claims are untimely under the listed statutes, which require that complaints be filed between two and four years from the alleged wrongful conduct? Does Defendant have any documents showing that Plaintiff's Complaint is untimely? If so, Defendant must provide any and all of those documents to Plaintiff. **If Defendant does not have in his possession, and cannot get on his request, any pertinent documents, or such documents do not exist**, he may respond by stating "I do not have possession, custody or control over any such documents" or "there are no documents responsive to this request."

***B. Interrogatories***

Pursuant to Rule 33(a)(3), "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." Under rule 33(a)(4), "[t]he grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."

Defendant has not provided adequate responses to Plaintiff's interrogatories. Defendant either states that he does not understand the question or asks Plaintiff to refer to Mr. Yu. As to the interrogatories to which Defendant responded by referring Plaintiff to Mr. Yu, **Defendant must himself answer the interrogatory to the best of his ability**. If Defendant does not know the answer to an interrogatory, he may

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

respond by stating he does not know the answer.

Regarding the interrogatories which Defendant claims he does not understand, the interrogatories ask Defendant to support the denials in the Answer and Defendant's affirmative defenses with facts. Specifically, interrogatories nos. 1-18 ask Defendant to state the facts which explain why he is denying the allegations in certain paragraphs from the Complaint. Defendant must provide any such **facts** that he knows about.

As to interrogatory no. 20, Plaintiff is asking Defendant if Defendant knows any other person who would know anything about the allegations in the Complaint. If Defendant knows any such persons, Defendant must provide each and all of their names in response to interrogatory no. 20.

**C. Sanctions**

Pursuant to Rule 37(a)(1)—

*In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

Pursuant to Rule 37(a)(5)—

(A) *If the Motion Is Granted or Disclosure or Discovery Is Provided After Filing.* If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

(iii) other circumstances make an award of expenses unjust.

Pursuant to Rule 37(b), in pertinent part—

**(2) Sanctions Sought in the District Where the Action Is Pending.**

(A) *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent--or a witness designated under Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;**
- (iii) striking pleadings in whole or in part;**
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or**
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(emphasis added).

Because Defendant is a *pro se* party and may not have understood the discovery requests, the Court will not award sanctions at this time. However, if Defendant does not provide responses in accordance with the Court's instructions above, the Court may prevent Defendant from asserting some or all of his affirmative defenses, as set forth in his Answer. The Court also may strike the Answer. If Defendant's Answer is stricken, this adversary proceeding will continue as if Defendant never filed a response to the Complaint, and Plaintiff will be able to file a motion for default



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Robin DiMaggio**  
judgment.

**Chapter 7**

If Plaintiff can prove the allegations in the Complaint through the motion for default judgment, the Court may enter judgment against Defendant and determine that, despite the bankruptcy, Defendant remains liable to Plaintiff or Defendant remains liable for the entirety of his debts. To prevent these kind of sanctions, Defendant must respond to Plaintiff's discovery requests to the best of his ability pursuant to the Court's ruling above.

**III. CONCLUSION**

The Court will compel Defendant to provide supplemental responses in accordance with the ruling above no later than **21 days** after entry of the order on this Motion.

Plaintiff must submit an order within seven (7) days.

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

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#13.00** Motion to dismiss plaintiffs second amended complaint,  
with prejudice

Docket 43

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Defendants") filed a voluntary chapter 11 petition. On November 27, 2017, Pogos Araik Melkonian ("Plaintiff") filed a complaint against Defendants (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A). On January 3, 2018, Defendants filed a motion to dismiss the Complaint (the "First Motion to Dismiss") [doc. 10].

On March 7, 2018, the Court held a hearing on the First Motion to Dismiss. At that time, the Court issued a ruling [doc. 17] granting the First Motion to Dismiss, without leave to amend, as to Plaintiff's claims under 11 U.S.C. § 523(a)(2) and (a)(6). The Court granted the First Motion to Dismiss, with leave to amend, as to Plaintiff's claim of defalcation under 11 U.S.C. § 523(a)(4). With respect to Plaintiff's claim under 11 U.S.C. § 727(a)(4), the Court denied the First Motion to Dismiss as to Plaintiff's allegations regarding the valuation of Defendants' businesses, but granted the First Motion to Dismiss, with leave to amend, regarding Plaintiff's allegations about Defendants' allegedly false oaths concerning their schedule J expenses, current business income, electronics and jewelry. On March 19, 2018, the Court entered an order granting in part and denying in part the First Motion to Dismiss [doc. 21].

On April 2, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 23], seeking nondischargeability of the debt owed to him under 11 U.S.C. § 523(a)(4) and, for the first time, under 11 U.S.C. § 523(a)(19). Plaintiff also requested denial of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

Defendants' discharge under 11 U.S.C. § 727(a)(4)(A). On April 18, 2018, Defendants filed a motion to dismiss the FAC (the "Second Motion to Dismiss") [doc. 26].

On May 9, 2018, the Court held a hearing on the Second Motion to Dismiss. At that time, the Court issued a ruling (the "Ruling") [doc. 35] granting the Second Motion to Dismiss, without leave to amend, as to Plaintiff's claims under 11 U.S.C. § 523(a)(4) and (a)(19). With respect to Plaintiff's claim under 11 U.S.C. § 727(a)(4), the Court denied the Second Motion to Dismiss as to the allegations regarding Defendants' allegedly false oaths concerning the value of their businesses, and granted the Second Motion to Dismiss, with leave to amend, as to Plaintiff's allegations regarding Defendants' stated business income in their schedule I as compared to the income stated in their monthly operating reports. In relevant part, the Court stated:

On the one hand, Plaintiff argues that, based on the historic gross income stated in Defendants' Statement of Financial Affairs, Defendants knowingly and fraudulently *undervalued* their interests in businesses. On the other hand, Plaintiff argues that Defendants *overstated* their business income, because the [monthly operating reports] do not reflect the business income listed in Defendants' Schedule I. Given the FAC's contention that Defendants *undervalued* their interests in businesses, it is not simultaneously plausible that Defendants would knowingly and fraudulently include *inflated* business income in their Schedule I. If Defendants are knowingly and fraudulently undervaluing their business interests, Defendants derive no benefit from putting forth allegedly exaggerated business income in their Schedule I.

Ruling, pp. 18-19 (emphasis in Ruling). On June 21, 2018, the Court entered an order granting in part and denying in part the Second Motion to Dismiss [doc. 45].

On May 23, 2018, Plaintiff filed a second amended complaint (the "SAC") [doc. 42], requesting denial of Defendants' discharge under 11 U.S.C. § 727(a)(4)(A). In relevant part, Plaintiff alleges in the SAC:

Defendants listed an interest in two businesses from which they derive

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Yegiya Kutyan**

**Chapter 11**

their income in their schedule B: Custom Wood Creations, Inc. ("Custom Wood") and Millennium Beauty Salon ("Millennium"). Defendants indicate that Custom has a value of \$0 and Millennium has a value of \$750. Defendants have purposefully understated the value of Custom and Millennium. Their Statement of Financial Affairs indicates that the businesses generate significant revenue.

Defendants also have not disclosed anything about the assets of these entities, such as information about the business equipment and outstanding accounts receivable. Defendants only disclose the questionable ownership interests in these businesses. In addition, in their schedule I, Defendants state that their average monthly income from Custom Wood is \$4,371.83 and that their average monthly income from Millennium is \$548.72. Defendants have purposefully understated their income from both businesses. Defendants also have failed to attach required statements showing gross receipts, ordinary and necessary business expenses and totally monthly net income for both business entities.

Defendants' monthly operating reports ("MORs") reveal significant inconsistencies with Defendants' schedules and Defendants' Declaration of Current and Postpetition Income and Expenses, filed in support of Defendants' proposed chapter 11 plan of reorganization. Defendants' MORs reflect a significantly lower income for Defendants. The average income reflected by Defendants' MORs is actually \$6,086.11 per month, and only \$4,701.22 without accounting for a tax refund Defendants received in March 2018. Removing the \$3,587.91 received from Defendants' In-Home Supportive Services income, the MORs reflect an average of \$1,114.31 in business income. As a result, the Court should deny Defendants their discharge under 11 U.S.C. § 727(a)(4)(A). Plaintiff also requests general and compensatory damages in the amount of \$600,000 and punitive damages against Defendants.

On June 6, 2018, Defendants filed a motion to dismiss the SAC (the "Motion") [doc. 43]. On July 18, 2018, Plaintiff filed an opposition to the Motion (the "Opposition")

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

[doc. 49]. On July 25, 2018, Defendants filed a reply to the Opposition [doc. 53].

## **II. ANALYSIS**

### ***A. Federal Rule of Civil Procedure ("Rule") 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Further, a court may consider 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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Yegiya Kutyan**

**Chapter 11**

authenticity of the copy attached to the [Rule] 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). "The court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

***B. 11 U.S.C. § 727(a)(4)***

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010) (quoting *In re Khalil*, 379 B.R. 163, 173 (B.A.P. 9th Cir. 2007)). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

(quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show 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 creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*Roberts*, 331 B.R. at 884.

Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (B.A.P. 9th Cir. 2007) (circumstances might include multiple omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F3d 974, 982 (7th Cir. 2011).

First, the Court already determined in the Ruling that Plaintiff's allegations regarding Defendants' valuation of their businesses may proceed. In light of the Court's prior ruling, the Court will not grant the Motion as concerns Plaintiff's allegations regarding the scheduled value of Defendants' businesses.

As concerns Plaintiff's allegations regarding the discrepancy between Defendants' schedules and their MORs, the SAC, like the FAC, is internally inconsistent. Plaintiff first alleges that Defendants have undervalued their businesses, SAC, ¶ 17, and understated their income from Custom Wood and Millennium in their schedule I. SAC, ¶ 22. Plaintiff then alleges that Defendants have overstated their income in their schedule I based on a review of Defendants' MORs. SAC, ¶¶ 25-31. Once again, it is not simultaneously plausible that Defendants would knowingly and fraudulently inflate their income in schedule I while undervaluing their businesses.

In addition to these allegations being inconsistent, the SAC does not establish the significance of these allegations, i.e., why the difference in income between the MORs and schedule I amounts to fraudulent conduct. As with the FAC, Plaintiff has

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

not alleged how Defendants benefit from exaggerating their business income in their schedule I. As such, the Court will grant the Motion, with prejudice, as to the allegations regarding Defendants' scheduled income as compared to their MORs.

Finally, Plaintiff requests compensatory and punitive damages in the SAC despite the fact that the Court has now dismissed all of Plaintiff's claims under 11 U.S.C. § 523. Because the sole remaining claim is under 11 U.S.C. § 727(a)(4)(A), and the Court will not be adjudicating the claims on which Plaintiff's damages are based, Plaintiff's claim for compensatory and punitive damages will be stricken.

**III. CONCLUSION**

The Court will dismiss, without leave to amend, the allegations regarding the differences between Defendants' scheduled income and Defendants' MORs. The Court will deny the Motion as concerns the allegations regarding the valuation of Custom Wood and Millennium in Defendants' schedule A/B. The Court also will strike Plaintiff's request for compensatory and punitive damages.

Defendants must submit an order within seven (7) days. No later than **14 days** after entry of the order on the Motion, Defendants must file an answer to the SAC.

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Defendant(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili  
Sanaz S Bereliani

Haykush Helen Kutyan

Represented By  
Sheila Esmaili  
Sanaz S Bereliani

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

Sheila Esmaili

**Chapter 11**

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Vahe Khojayan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#14.00** Motion to vacate amended default judgment against debtor/  
defendant Alice Sungjin Cheong

fr. 7/18/18

Docket 72

**Tentative Ruling:**

For the reasons and **to determine the issue** stated below, the Court will set an evidentiary hearing on this matter.

**I. BACKGROUND**

**A. The State Court Action**

On June 9, 2006, Kyung Chul Kim initiated a state court action against Alice Sungjin Cheong ("Judgment Debtor") and other parties (collectively, "Defendants"), alleging claims of fraud and negligent misrepresentation arising from a real estate transaction (the "State Court Action"). (Declaration of Mi Hee Kim, Request for Judicial Notice ("RJN"), Exh. 3, ¶ 2.)

On August 10, 2010, Judgment Debtor entered into a settlement agreement (the "Settlement") with Mr. Kim, settling all claims from the State Court Action. (*Id.*, ¶ 3.) On August 24, 2010, Judgment Debtor entered into a stipulation for entry of judgment (the "Stipulated Judgment"). (*Id.*, ¶ 4.) Under the terms of the Stipulated Judgment, Defendants agreed to make payments over the course of 18 months in satisfaction of Mr. Kim's \$1,885,000 judgment against Defendants. (RJN, Exh. 3 to Exh. 3, ¶ 2.) Mr. Kim agreed "not to foreclose or take other legal action to collect on [the] judgment for a period of eighteen (18) months from July 30, 2010, as long as Defendants complied with the terms" of the Settlement. (RJN, Exh. 3, ¶ 3.)

On November 12, 2010, Judgment Debtor did not comply with the terms of the Settlement and the Stipulated Judgment. (*Id.*, ¶ 5.) On November 15, 2010, the state court entered a judgment pursuant to the Stipulated Judgment (the "State Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Alice Sungjin Cheong Chapter 7**

Judgment"). (*Id.*) On June 22, 2011, Mr. Kim assigned the State Court Judgment to Mi Hee Kim. (*Id.*, ¶ 6.)

***B. The First Case and First Adversary Proceeding***

On November 6, 2014, Judgment Debtor filed her first chapter 7 petition, commencing case no. 2:14-bk-30889-RN (the "First Case"). Judgment Debtor's residence address stated in her First Case petition was 274 S. La Fayette Park Place, # 222, Los Angeles, CA 90057 (the "Los Angeles Address"). On November 9, 2015, the First Case was closed without discharge because Judgment Debtor did not file a certificate of financial management course [2:14-bk-30889-RN, doc. 14].

On February 6, 2015, Mr. Kim and Mi Hee Kim ("Judgment Creditors") filed an adversary proceeding against the Debtor, commencing case no. 2:15-ap-01080-RN (the "First Adversary Proceeding"). On October 21, 2015, the First Adversary Proceeding was dismissed [2:15-ap-01080-RN, doc. 15].

***C. The Second Case and Second Adversary Proceeding***

On January 20, 2016, Judgment Debtor filed a second voluntary chapter 7 petition, commencing case no. 1:16-bk-10166-VK (the "Second Case"). Judgment Debtor's residence address stated in her Second Case petition is 20458 Napa St., Winnetka, CA 91306 (the "Winnetka Address"). In the Second Case, Judgment Debtor has not filed a notice of change of address. In her schedules, Judgment Debtor lists "Kim v. Chou c/c Ronald P. Slates" as a creditor holding an unsecured claim in the amount of \$3,000,000.

On April 25, 2016, the Judgment Debtor received a chapter 7 discharge in the Second Case (the "Order of Discharge") [1:16-bk-10166-VK, doc. 21]. The Order of Discharge provides, in relevant part:

**Most debts are discharged**

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

...

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Alice Sungjin Cheong**  
**Some debts are not discharged**

**Chapter 7**

Examples of debts that are not discharged are:

- debts that are domestic support obligations;
- debts for most student loans;
- debts for most taxes;
- debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case[.]

(1:16-bk-10166-VK, doc. 21, at pp. 1–2 (emphasis in original).)

On April 15, 2016, prior to entry of discharge, Judgment Creditors filed a complaint against Judgment Debtor (the "Complaint"), commencing the pending adversary proceeding (the "Second Adversary Proceeding"). In the Complaint, Judgment Creditors seek a determination that the debt owed to them by Judgment Debtor is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). In the Second Adversary Proceeding, Judgment Debtor has not filed a notice of change of address.

On June 13, 2016, Judgment Creditors filed an initial request for entry of default [doc. 4]. On June 14, 2016, because Judgment Debtor's address on the proof of service did not match the Court records, the Court issued a notice that default was not entered [doc. 6]. On June 16, 2016, Judgment Creditors served an alias summons and the Complaint on Judgment Debtor [doc. 12].

***1. The First Motion for Default Judgment***

On July, 26, 2016, Judgment Creditor again filed a request for entry of default [doc. 16]. On July 27, 2016, the Court entered default against Judgment Debtor (the "First Entry of Default") [doc. 18]. On September 20, 2016, Judgment Creditors filed their first motion for default judgment (the "First Motion for Default Judgment") [doc. 23].

On November 9, 2016, the Court held a hearing on the First Motion for Default Judgment. In the Court's ruling [doc. 28], the Court held that the Complaint and the First Motion for Default Judgment did not sufficiently demonstrate that Judgment

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Alice Sungjin Cheong Chapter 7**

Debtor was culpably involved in the alleged fraudulent scheme detailed in the Complaint. On January 5, 2017, the Court entered an order denying the First Motion for Default Judgment [doc. 33].

On December 8, 2016, Judgment Creditors filed a first amended complaint (the "FAC") [doc. 30]. On January 23, 2017, the Court issued another summons (the "FAC Summons") [doc. 40].

**2. *The Second Motion for Default Judgment and Motion to Vacate***

On February 23, 2017, Judgment Creditors requested entry of default against Judgment Debtor [doc. 42]. On February 24, 2017, the Clerk of Court entered default against Judgment Debtor (the "Second Entry of Default") [doc. 43].

On April 26, 2017, Judgment Creditors filed another motion for default judgment (the "Second Motion for Default Judgment") [doc. 46]. In the Second Motion for Default Judgment, Judgment Creditors alleged that they had filed the FAC because of recently discovered evidence that Mr. Kim had paid \$680,000 to Judgment Debtor as a result of the alleged fraud.

The Court granted the Second Motion for Default Judgment. On June 14, 2017, Judgment Creditors filed a notice of lodgment of the default judgment (the "June 2017 Notice of Lodgment") [doc. 52]. On June 22, 2017, the Court entered default judgment against Judgment Debtor (the "Default Judgment") [doc. 53]. The corresponding Certificate of Notice indicates that Judgment Debtor was served with the Default Judgment at the Los Angeles Address [doc. 54].

On July 10, 2017, the adversary proceeding was closed [doc. 55]. On February 3, 2018, Judgment Creditors filed a motion to reopen the adversary proceeding (the "Motion to Reopen") [doc. 56]. On March 19, 2018, Judgment Creditors filed a motion to amend the Default Judgment (the "Motion to Amend") [doc. 63]. The Motion to Amend requested the entry of an amended judgment to correct a typographical error.

On April 27, 2018, Judgment Creditors filed a notice of lodgment re: the proposed amended judgment (the "April 2018 Notice of Lodgment") [doc. 66]. On May 14,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Alice Sungjin Cheong**

**Chapter 7**

2018, the Court entered an amended default judgment against the Judgment Debtor (the "Amended Default Judgment") [doc. 67]. The corresponding Certificate of Notice indicates that Judgment Debtor was not served with the Amended Default Judgment at any address [doc. 71].

On May 25, 2018, Judgment Debtor filed a motion to vacate the Amended Default Judgment (the "Motion to Vacate") [doc. 72]. In support of the Motion to Vacate, Judgment Debtor represents:

Upon receiving the Order of Discharge, it was my honest belief and understanding that Plaintiff[s'] indebtedness of \$3,000,000, which was also the subject of the Adversarial Case, was included in the Order of Discharge, and that I was no longer required to respond to Plaintiffs' Adversary Case. For this reason, I no longer took any steps to file an Answer or Response on [sic] the Adversary Case in order to protect my rights.

(Declaration of Alice Sungjin Cheong, doc. 72, ¶ 11.)

On July 3, 2018, Judgment Creditors filed an opposition to the Motion to Vacate [doc. 87]. On July 10, 2018, Judgment Debtor filed a reply [doc. 92].

**3. Service of Pleadings on Judgment Debtor**

During the Second Adversary Proceeding, the following documents were served on the Judgment Debtor at the Winnetka Address, the residence address stated in her Second Case petition [FN1]:

<b>Document(s)</b>	<b>Service Date</b>	<b>Docket No(s).</b>
Alias summons and Complaint	June 16, 2016	12
First Motion for Default Judgment	September 20, 2016	24
FAC Summons	January 24, 2017	40, 41
Second Motion for Default Judgment	April 26, 2017	47
June 2017 Notice of Lodgment	June 14, 2017	52
Motion to Amend	March 19, 2018	64
April 2018 Notice of Lodgment	April 27, 2018	66

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 1, 2018

Hearing Room 301

2:30 PM

CONT...

Alice Sungjin Cheong

Chapter 7

**II. DISCUSSION**

Th[e] discretion [to deny a Rule 60(b) motion] is limited by three considerations. First, since Rule 60(b) is remedial in nature, it must be liberally applied. . . . Second, default judgments are generally disfavored and cases should be decided on their merits. . . . Third, where defendant seeks timely relief from the judgment and has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment. . . .

A district court has the discretion to deny a Rule 60(b)(1) motion, however, if (1) the defendant's culpable conduct led to the default, (2) the defendant has no meritorious defense, or (3) the plaintiff would be prejudiced if the judgment is set aside. . . .

*Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987) (citations omitted). "If a default judgment is entered as the result of a defendant's culpable conduct, however, we need not consider whether a meritorious defense was shown, or whether the plaintiff would suffer prejudice if the judgment were set aside." *Id.* "A defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and failed to answer." *Id.*

In *Meadows*, the defendants were properly served with the complaint and intentionally chose not to respond. The plaintiffs sought and obtained a default judgment against the defendants. The district court denied defendants' motion to set aside the default judgment. On appeal, the defendants argued that their decision not to respond to the complaint was excusable neglect. The Ninth Circuit Court of Appeals affirmed the district court, holding that defendants' default was "intentional, culpable, and inexcusable under Rule 60(b)(1)." *Id.* at 522. Because this neglect was inexcusable, the Ninth Circuit Court of Appeals that it did not need to determine whether defendants had a meritorious defense or whether plaintiff would suffer prejudice. *Id.*

Here, in the Second Case, Judgment Debtor listed her residence address as the Winnetka Address. Judgment Debtor has not filed a notice of change of address in the Second Case or in the Second Adversary Proceeding. On June 16, 2016, Judgment Debtor was properly served with the Complaint and alias summons at the Winnetka

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Alice Sungjin Cheong**

**Chapter 7**

Address. "Mailing a notice by first class mail to a party's last known address is sufficient to satisfy due process." *DeVore v. Marshack (In re DeVore)*, 223 B.R. 193, 196 (9th Cir. B.A.P. 1998); *see also Villareal v. Laughlin (In re Villarreal)*, 304 B.R. 882, 886 (8th Cir. B.A.P. 2004) ("Where notice is sent to the address listed by the Debtor in his petition, due process is satisfied.").

Judgment Debtor represents that she intentionally did not participate in the Second Adversary Proceeding, based on her belief that the Order of Discharge discharged her liability for the State Court Judgment. In light of the specific language set forth in the Order of Discharge, and the many pleadings filed in the Second Adversary Proceeding that were mailed to the Judgment Debtor, the Court questions whether the Judgment Debtor's conduct was culpable. In order to make that determination, the Court is of the view that an evidentiary hearing is required to assess Debtor's explanation for her alleged belief and for the timing of the filing of the Motion to Vacate.

### **III. CONCLUSION**

In light of the foregoing, the Court will set an evidentiary hearing on the issue of whether Judgment Debtor's conduct was "culpable," as that standard has been articulated by the Ninth Circuit Court of Appeals. Currently available dates for such a hearing include August 30, 2018 or September 7, 2018.

### **FOOTNOTE**

1. During the Second Adversary Proceeding, the following documents were served on the Judgment Debtor at the Los Angeles Address:

<b>Document(s)</b>	<b>Service Date</b>	<b>Docket No(s).</b>
Initial summons and Complaint	May 4, 2016	3
First Entry of Default (entered on July 27, 2016)	July 29 2016	21
Order denying the First Motion for Default Judgment (entered on January 5, 2017)	January 7, 2017	34
FAC Summons	January 24, 2017	40, 41
Second Entry of Default (entered on February 24, 2017)	February 26, 2017	44
Second Motion for Default Judgment	April 26, 2017	47
June 2017 Notice of Lodgment	June 14, 2017	52
Default Judgment (entered on June 22, 2017)	June 24, 2017	54





**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#15.00** Order to show cause why Alice Sungjin Cheong should not be held in contempt for failure to appear pursuant to the order to appear for examination entered on June 5, 2018

fr. 7/18/18

Docket 80

**Tentative Ruling:**

On January 20, 2016, Alice Sungjin Cheong ("Judgment Debtor") filed a voluntary chapter 7 petition. On April 15, 2016, Mi Hee Kim and Kyung Chul Kim ("Judgment Creditors") filed an adversary proceeding against Judgment Debtor.

On June 22, 2017, default judgment was entered against Judgment Debtor [doc. 53]. On May 14, 2018, an amended default judgment was entered against Judgment Debtor [doc. 67].

On May 25, 2018, Judgment Debtor filed an amended motion to vacate the amended default judgment (the "Motion to Vacate") [doc. 72]. The hearing on the Motion to Vacate is set for July 18, 2018 at 2:30 p.m.

On June 1, 2018, Judgment Creditors filed an *Application for Order for Appearance and Examination: Enforcement of Judgment* (the "Application") [doc. 75]. On June 5, 2018, the Court granted the Application and entered an order directing Judgment Debtor to appear for a judgment debtor examination (the "ORAP"). According to the proof of service filed by Judgment Creditors, on June 8, 2018, at approximately 5:36 p.m., Judgment Debtor was served with the ORAP at 20458 Napa Street, Winnetka, CA 91306 (the "Winnetka Address") [doc. 78]. Judgment Debtor was required to appear on June 20, 2018 at 2:30 p.m.

On June 20, 2018, Judgment Debtor did not appear for examination. On June 21, 2018, the Court issued the OSC [doc. 80]. The OSC was served on Judgment Debtor at the Winnetka Address. [FN1]

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Alice Sungjin Cheong**

**Chapter 7**

On July 5, 2018, Judgment Debtor filed her declaration in response to the OSC. (Declaration of Alice Sungjin Cheong, doc. 91.) Judgment Debtor represents that she did not appear for examination because she was never served with the ORAP. Instead, the process server mistakenly served an individual named Christine Valdez, who resides at the Winnetka Address. (*Id.*, ¶ 3.) Judgment Debtor also filed a declaration from Ms. Valdez. (Declaration of Christine Valdez, doc. 91.) Ms. Valdez represents that the process server served the ORAP on her, despite Ms. Valdez denying that she was Judgment Debtor.

In light of the foregoing, it appears that Judgment Debtor was not served with the ORAP. Accordingly, the Court will discharge the OSC. If Judgment Debtor does not currently reside at the Winnetka Address, Judgment Debtor must file a notice of change of address with the Court **no later than 7 days after this hearing**.

**FOOTNOTE**

1. The OSC was also served on Judgment Debtor at 274 S. La Fayette Park Pl # 222, Los Angeles, CA 90057 (the "Los Angeles Address"). On June 28, 2018, the Clerk of Court received a "return to sender" notice for the copy of the OSC mailed to the Los Angeles Address.

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

**Debtor(s):**

Alice Sungjin Cheong	Pro Se
----------------------	--------

**Defendant(s):**

DOES 1 through 10, inclusive	Pro Se
------------------------------	--------

**Plaintiff(s):**

Mi Hee Kim	Represented By Daren M Schlecter Konrad L Trope Kaela Haydu Ronald P Slates
------------	---

KYUNG CHUL KIM	Represented By
----------------	----------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Alice Sungjin Cheong**

**Chapter 7**

Daren M Schlecter  
Kaela Haydu  
Ronald P Slates

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12214 Yegiya Kutyan**

**Chapter 11**

Adv#: 1:17-01098 Melkonian v. Kutyan et al

**#16.00** Status conference re: second amended complaint for non-dischargeability of debt under section 523(a) for:  
(1) fraud or defalcation while acting in a fiduciary capacity [§523(a)(4)];  
(2) violations of securities law [§523(a)(19)];  
(3) and for denial of discharge for false oaths in bankruptcy documents [11 U.S.C. § 727(a)(4)(A)]

fr. 1/24/18; 3/7/18; 5/9/2018; 8/18/18

Docket 42

**Tentative Ruling:**

In light of the Court's ruling on the defendants' motion to dismiss [Cal #13], the parties should be prepared to discuss the following:

Deadline to complete discovery: 10/1/18.

Deadline to file pretrial motions: 10/15/18.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/31/18.

Pretrial: 1:30 p.m. on 11/14/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Yegiya Kutyan**

**Chapter 11**

**Defendant(s):**

Yegiya Kutyan

Pro Se

Haykush Helen Kutyan

Pro Se

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**Plaintiff(s):**

Pogos Araik Melkonian

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

3:30 PM

**1:18-11936 Jose Luis Gonzalez**

**Chapter 13**

**#17.00** Emergency motion to enforce the automatic stay

Docket 11

**Tentative Ruling:**

Grant on an interim basis, until the next hearing. The Court intends to continue this hearing to **September 5, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(4), in order to impose the automatic stay in a case filed within one year of two or more cases of the debtor that were pending but were dismissed, the debtor must show that the pending case was filed in good faith as to the creditors to be stayed.

***The First Case.*** On August 31, 2017, Jose Luis Gonzalez (the “Debtor”) filed a chapter 13 petition, commencing case no. 1:17-bk-12312-MT (the “First Case”). In the First Case, the Debtor was represented by counsel. On August 31, 2017, the Court issued a *Notice of Dismissal of Case if Required Documents Are Not Filed or Signed* (“Dismissal Notice”) [1:17-bk-12312-MT, doc. 3]. The Dismissal Notice provided that the First Case would be dismissed if the Debtor did not comply within 72 hours. On September 6, 2017, the Court entered an order dismissing the First Case [1:17-bk-12312-MT, doc. 10].

***The Second Case.*** On January 3, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10017-VK (the “Second Case”). In the Second Case, the Debtor was represented by counsel. On January 4, 2018, the Court entered an *Order to Comply with Bankruptcy Rule 1007 and 3015(B) and Notice of Intent to Dismiss Case* (the “Order to Comply”) [1:18-bk-10017-VK, doc. 7]. The Order to Comply directed the Debtor to file his chapter 13 plan no later than 14 days after the petition date. No chapter 13 plan was filed. On January 22, 2018, the Court entered an order dismissing the Second Case [1:18-bk-10017-VK, doc. 12].

***The Third Case.*** On January 29, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10251-MT (the “Third Case”). In the Third Case, the Debtor was represented by counsel. On March 28, 2018, the Court entered an order dismissing the Third Case, for failure to appear at the 341(a) meeting and/or to make

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

3:30 PM

**CONT... Jose Luis Gonzalez**

**Chapter 13**

pre-confirmation plan payments [1:18-bk-10251-MT, doc. 29].

*The Pending Case.* On July 31, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-11936-VK (the "Pending Case"). On August 1, 2018, the Debtor filed an *Emergency Motion to Enforce the Automatic Stay* (the "Motion") [doc. 11]. Through the Motion, the Debtor seeks to impose the automatic stay in his case as to all secured creditors, with respect to his single family residence located at 22051 Sagebrook Drive, Chatsworth, CA 91311 (the "Property").

The Debtor states that on August 2, 2017, he submitted a loan modification application to Bank of America. Bank of America subsequently informed the Debtor that the loan modification process had been transferred to Carrington Mortgage Services, LLC ("Carrington"). Then the Debtor was informed that he had to re-start the loan modification process, directly with Carrington. On December 12, 2017, the Debtor submitted a loan modification application to Carrington. The Debtor alleges that Carrington improperly denied his loan modification application.

The Debtor represents that the attorneys who assisted him with his prior bankruptcy cases are responsible for the dismissal of those cases, because of their inadequate assistance. The Debtor further represents that he can confirm a 100% payment plan and has adequate income to cover the ongoing mortgage payments plus payment of arrears over 5 years.

In light of the foregoing, the Court will grant the Motion on an interim basis and impose the automatic stay on all secured creditors up to the date of the continued hearing. **No later than August 8, 2018**, the Debtor must also file and serve notice of the continued hearing, and serve the Motion, on *all* secured creditors. The notice of continued hearing must state that the deadline to file an opposition to the Motion is **August 22, 2018**. The deadline to file a reply is **August 29, 2018**. If the Debtor does not appear at the continued hearing on September 5, 2018, the Court may deny the Motion and lift the automatic stay.

**Party Information**

**Debtor(s):**

Jose Luis Gonzalez

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 1, 2018**

**Hearing Room 301**

---

3:30 PM

**CONT... Jose Luis Gonzalez**

Hovig J Abassian

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

10:30 AM

**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#1.00** Fifth and final application for compensation and reimbursement of expenses of Michael Jay Berger

Docket 258

**Tentative Ruling:**

Law Offices of Michael Jay Berger ("Applicant"), counsel to the debtor and debtor in possession - approve fees in the amount of \$19,200.50 and expenses in the amount of \$1,526.08, pursuant to 11 U.S.C. § 330. Based on the agreement between the debtor and Applicant, as discussed in the Fifth and Final Application, Applicant may collect \$26,000.00 in unpaid, allowed fees and expenses.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

10:30 AM

**1:16-10817 Jose J. Lamas**

**Chapter 7**

**#2.00 Notice of trustee's final report and applications for compensation**

Nancy Zamora - Chapter 7 Trustee

Docket 54

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee - approve fees of \$738.50 and reimbursement of expenses of \$332.45.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

-

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

**Debtor(s):**

Jose J. Lamas

Represented By  
Michael A Rivera

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:14-10097 Rodney M Mojarro**

**Chapter 11**

**#3.00** Post confirmation status conference re chapter 11 case

fr. 9/3/15; 2/4/16; 8/4/16; 9/8/16; 3/9/17; 4/6/17; 8/3/17;

8/10/17; 11/16/17; 12/14/17; 5/17/18; 6/7/18

Docket 1

**Tentative Ruling:**

The reorganized debtor has not filed a post-confirmation status report since December 14, 2017 [doc. 227]. Is the reorganized debtor in compliance with United States Trustee reporting requirements?

**Ruling from 6/7/18**

Contrary to the Court's instructions from the last post-confirmation status conference, the reorganized debtor has not timely filed a post-confirmation status report pursuant to Local Bankruptcy Rule 3020-1(b).

**Party Information**

**Debtor(s):**

Rodney M Mojarro

Represented By  
Michael J Jaurigue

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#4.00** Disclosure statement hearing in support of plan of reorganization

fr. 2/8/18; 3/29/18; 4/12/18; 6/14/18

Docket 79

**Tentative Ruling:**

The proof of service filed by the debtor [doc. 121] does not reflect proper service on the Internal Revenue Service (the "IRS").

The debtor must serve all required papers for confirmation on the IRS in accordance with Local Bankruptcy Rule 2002-2(c) and Fed. R. Bankr. P. 5003(e) and use the addresses set forth in the "Register of Federal and State Government Unit Addresses [F.R.B.P. 5003(e)]" listed in the Court Manual under Appendix D, available on the Court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Rules & Procedures." In accordance with the foregoing, notice of any future contested matter involving a claim of the IRS, **including the debtor's filings related to confirmation of the debtor's proposed chapter 11 plan**, must be served at **each** of the following addresses:

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

United States Attorney's Office  
Federal Building, Room 7516  
300 North Los Angeles Street  
Los Angeles, CA 90012

United States Department of Justice  
Ben Franklin Station  
P. O. Box 683  
Washington, DC 20044

Proposed dates and deadlines regarding "Individual Debtor's Amended Chapter 11"

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**      **Ikechukwu Mgbeke**  
Plan of Reorganization" (the "Plan")

**Chapter 11**

Pursuant to 11 U.S.C. § 1125, the Court will approve the "Individual Debtor's Amended Disclosure Statement in Support of Amended Plan of Reorganization:"

Hearing on confirmation of the Plan: **October 4, 2018 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **August 17, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **September 14, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **September 24, 2018.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

Debtor must submit the order within seven (7) days.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 6/22/17; 7/6/17; 7/13/17; 8/10/17; 9/21/17; 10/5/17;  
12/21/17; 2/8/18; 3/29/18; 6/7/18

Docket 1

**Tentative Ruling:**

The debtor's monthly operating report for June 2018 indicates that he has not paid United States Trustee's fees due for 2018.

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

**#6.00** Motion to restrict use of cash collateral and  
for adequate protection.

Docket 33

**Tentative Ruling:**

The Court will continue this hearing to **September 6, 2018 at 2:00 p.m.**

Contrary to Federal Rule of Bankruptcy Procedure ("FRBP") 4001(a)(1), the motion was not served on the 20 largest unsecured creditors, as identified in the List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders [doc. 5]. **No later than August 9, 2018**, movant must serve the motion, and file and serve notice of the continued hearing, pursuant to FRBP 4001(a)(1).

Appearances on August 2, 2018 are excused.

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

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

**#7.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **October 31, 2018.**

Deadline to mail notice of Bar Date: **August 17, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Continued chapter 11 case status conference to be held at **1:00 p.m. on December 6, 2018.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11580 Kaliston Jose Nader**

**Chapter 11**

**#8.00** Status conference re: chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **October 15, 2018.**

Deadline to mail notice of Bar Date: **August 15, 2018.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **December 31, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 17, 2019.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**Debtor(s):**

Kaliston Jose Nader

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

2:00 PM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

**#9.00** Trustees motion for an order approving stipulation providing for advance payment of \$35,000 of projected surplus estate funds to the debtor

Docket 276

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, August 2, 2018

Hearing Room 301

2:00 PM

1:17-11495 Steven Nia

Chapter 7

#10.00 Motion to withdraw as counsel for debtor

7/5/18;

Docket 149

\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed on 7/6/18 [doc. 160]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, August 2, 2018

Hearing Room 301

2:00 PM

1:18-10162 JBC Staples, LLC

Chapter 11

#11.00 Debtor's motion to extend deadline to file the disclosure statement and chapter 11 plan of reorganization

Docket 72

\*\*\* VACATED \*\*\* REASON: Order of dismissal with 180 day bar entered 7/26/18 [Dkt.93]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, August 2, 2018

Hearing Room 301

2:00 PM

1:18-10162 JBC Staples, LLC

Chapter 11

#12.00 Motion to dismiss chapter 11 bankruptcy case under 11 USC  
section 1112 and related relief

Docket 75

\*\*\* VACATED \*\*\* REASON: Order of dismissal with 180 day bar entered  
7/26/18 [Dkt.93]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#13.00** Motion for order authorizing use of cash collateral

7/5/18

Docket 26

**Tentative Ruling:**

**July 5, 2018 Ruling**

The debtor did not properly serve the motion on either Bank of America, N.A. ("BOA") or Real Time Resolutions, Inc. ("Real Time"). With respect to BOA, the debtor indicated that she served BOA at the Tryon Street address, but the address in the proof of service does not include the correct zip code for that address. The zip code of BOA's headquarters is "28202," not "28255." Moreover, the Tryon Street address is not the address for the agent for service of process. That address is listed on the California Secretary of State's website as "Vivian Imperial, 818 W. Seventh St., Ste 930, Los Angeles, CA 90017." The Tryon Street address is the address for BOA's headquarters, at which address the debtor should serve any notice "c/o" an officer or director of BOA.

As for Real Time, the debtor served Real Time's agent for service of process at Real Time's headquarters. Once again, the debtor must serve Real Time at its headquarters by addressing the mailing "c/o" an officer or director of BOA. The debtor did not serve Real Time's agent for service of process at the correct address, which, according to the California Secretary of State's website, is: "Vivian Imperial, 818 W. Seventh St., Ste 930, Los Angeles, CA 90017."

Moreover, the debtor did not file form F 4001-2.STMT.FINANCE, located on the Court's website, as required by Local Bankruptcy Rule 4001-2(a).

In addition to these issues, the debtor did not account for payments to Real Time in her monthly budget. Does the debtor use the income generated by the subject real property to make payments to Real Time? Moreover, the debtor did not include a deed of trust in favor of BOA. As such, it is unclear if BOA has an interest in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Rowena Benito Macedo**

**Chapter 11**

rents generated by the subject property.

In light of these issues, the Court will not grant this motion at this time. If the debtor files and serves an amended notice of motion and motion for an order authorizing the use of cash collateral and cures the deficiencies above by **July 12, 2018**, the Court will hold a hearing on the amended motion at **2:00 p.m. on August 2, 2018**.

Appearances are excused on July 5, 2018.

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

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 2, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11580 Kaliston Jose Nader**

**Chapter 11**

**#14.00** Motion in individual chapter 11 case for order authorizing use of cash collateral

Docket 20

**Tentative Ruling:**

The Court will grant the debtor's motion as to the real property located at 11144 Louise Avenue, Granada Hills, California 91344.

The deed of trust encumbering the real property located at 1432 El Paso Drive, Los Angeles, California 90065 (the "El Paso Property") does not appear to have a provision assigning rents to the lender [doc. 20, Exhibit 1]. As such, the debtor does not need authorization from this Court to use rental income generated by the El Paso Property.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Kaliston Jose Nader

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13160 Shalva Shalom Krihali**

**Chapter 13**

**#0.10** Confirmation hearing re chapter 13 amended plan

Docket 39

**Tentative Ruling:**

The Court will sustain the chapter 13 trustee's objection to confirmation of the debtor's amended chapter 13 plan [doc. 39].

**I. BACKGROUND**

On November 27, 2017, Shalva Shalom Krihali (the "Debtor") filed a chapter 7 petition. On March 15, 2018, the Debtor's case was converted from chapter 7 to chapter 13 [doc. 22].

On March 22, 2018, the Debtor filed a chapter 13 plan [doc. 27]. On March 22, 2018, the Debtor filed a Statement of Current Monthly Income, Form 122C-1 (the "Statement") [doc. 26]. In the Statement, the Debtor listed his plan commitment period as three years and a deduction of \$5,192.50 in business expenses. The Debtor listed his net business income as \$5,207.50. The Debtor used his net business income amount to calculate his current monthly income.

On June 6, 2018, the chapter 13 trustee (the "Trustee") filed an objection to the plan (the "Objection") [doc. 36]. On July 3, 2018, the Debtor filed a first amended chapter 13 plan and a reply to the Objection (the "Debtor's Reply") [doc. 39]. On July 9, 2018, the Trustee filed an objection to the Debtor's first amended chapter 13 plan [doc. 43].

On July 10, 2018, the Court held a hearing on plan confirmation. The Court continued the hearing to allow the Trustee to submit a brief to address the Debtor's arguments that he should be allowed to deduct business expenses from gross business receipts to determine his current monthly income and applicable plan commitment period.

On July 24, 2018, the Trustee filed a brief in response to the Debtor's Reply [doc. 44].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shalva Shalom Krihali  
II. DISCUSSION**

**Chapter 13**

Pursuant to 11 U.S.C. § 1322(d)(2):

If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

Pursuant to 11 U.S.C. 101(10A):

The term "current monthly income"—

(A) *means the average monthly income from all sources that the debtor receives* (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Shalva Shalom Krihali**

**Chapter 13**

current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(Emphasis added.)

Pursuant to 11 U.S.C. § 1325(b)(1):

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income ***to be received in the applicable commitment period*** beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(Emphasis added.)

Pursuant to 11 U.S.C. § 1325(b)(2):

For purposes of this subsection, the term "disposable income" means ***current monthly income received by the debtor*** (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Shalva Shalom Krihali**

**Chapter 13**

law to the extent reasonably necessary to be expended for such child)  
less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

***(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.***

(Emphasis added.)

The Trustee bases the Objection on *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238 (9th Cir. B.A.P. 2008). In *Wiegand*, the debtors followed the instructions on Form 22C and deducted business expenses from their self-employment income to determine their current monthly income. The debtors' resulting current monthly income entitled them to a three-year applicable plan commitment period. The chapter 13 trustee objected that such deduction was improper, and the bankruptcy court overruled the objection. On appeal, the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP") reversed the bankruptcy court.

The BAP noted the conflict between Form 22C and § 1325(b)(2)(B). Form 22C instructs debtors to deduct business expenses from gross receipts to arrive at current monthly income. Section 1325(b)(2)(B) provides that business expenses are to be deducted from current monthly income to arrive at disposable income. Notwithstanding this conflict, "when an Official Bankruptcy Form conflicts with the Code, the Code always wins." *Wiegand*, 386 B.R. at 241 (citing *In re Arnold*, 376 B.R. 652, 653 (Bankr. M.D. Tenn. 2007)).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shalva Shalom Krihali**

**Chapter 13**

In *Wiegand*, the BAP assessed § 1325(b)(2) as being plain and unambiguous:

This section provides that disposable income means current monthly income received by the debtor less amounts reasonably necessary for support and maintenance of the debtor and the debtor's dependents. § 1325(b)(2)(A). For a debtor engaged in business, current monthly income can be further reduced by the payment of expenditures necessary for the continuation, preservation, and operation of the business. § 1325(b)(2)(B). We can conclude from the statutory language that the specificity of §1325(b)(2)(B) controls—business deductions are to be taken from a debtor's current monthly income to arrive at the debtor's disposable income.

*Id.* at 242. Relying on principles of statutory construction, the BAP held that § 1325(b)(2) should be construed to avoid surplusage: "If business expenses are deducted from gross receipts to determine a chapter 13 debtor's current monthly income [as per Form 22C], then there would be no need for § 1325(b)(2)(B), which provides for the same deductions." *Id.*

The BAP further explained:

We also observe that our plain meaning interpretation is not absurd because the Code is replete with rules and requirements that impact sole proprietors differently than wage earners. For example, an individual chapter 13 debtor in business may be expected to have more debt associated with his or her operation than someone who works for wages. That the "profit" from the business does not exceed what another makes in salary does not relieve the sole proprietor from the debt limits for eligibility for chapter 13 relief. It may be that Congress simply did not want those persons generating significant revenues through a business to have access to three-year chapter 13 plans.

*Id.* at 243.

Both parties agree that the Ninth Circuit Court of Appeals has not ruled on whether Bankruptcy Appellate Panel decisions are binding throughout the Ninth Circuit. The Debtor argues that this Court should depart from the holding of *Wiegand*. Like its

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shalva Shalom Krihali**

**Chapter 13**

predecessor, Form 22C, the current Form 122C-1 requires a self-employed debtor to deduct business expenses from gross operating revenue to determine current monthly income. The Debtor argues he should be allowed to rely on Form 122C-1 and not on § 1325(b)(2)(B) to determine his current monthly income, for purposes of the applicable plan commitment period pursuant to § 1322(d)(2).

In support of his position, the Debtor cites *In re Romero*, Case No. 12-20793-BKC-AJC, 2013 WL 241742 (Bankr. S.D. Fla. Jan. 22, 2013); *In re Roman*, Case No. 11-01415 BR, 2011 WL 5593143 (Bankr. D.P.R. Nov. 16, 2011); and *In re Ramsey*, Case No. 10-55255 (Bankr. E.D. Mich. Oct. 4, 2011).

In *In re Roman*, a self-employed chapter 13 debtor deducted his business expenses from his gross receipts, resulting in net business income that qualified the debtor the shorter three-year plan commitment period. The chapter 13 trustee objected. The bankruptcy court overruled the trustee's objection, noting that all chapter 13 debtors are required to complete a Form 22C. That form allows a debtor to deduct business expenses from gross business receipts, and uses net business income to calculate a debtor's current monthly income. The court acknowledged *Wiegand's* holding, but saw "no sufficient reason to depart from the mechanical test established in Sections 101(10A) and 1325(b) or from Form [22C]." *In re Roman*, 2011 WL 5593143, at \*4. The court noted:

Among other things, the additional income of a business (as of a non-debtor spouse) is completely irrelevant for the reckoning of Debtor's plan, if that income is not made available to cover household expenses so that the debtor has more money available to make the plan payment. . . .

Also, the use of gross receipts for self-employed debtors would lead to distinctions in the calculation of current monthly income based on the business form under which the debtor has chosen to operate, resulting in prejudicial treatment to business proprietors. . . . Business owners need to invest in business related expenses, such as raw materials and equipment, prior to generating any income. As a result, the net revenue (gross revenue minus expenses) becomes the real income.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

CONT... **Shalva Shalom Krihali**  
*Id.*

**Chapter 13**

In *In re Romero*, the bankruptcy court applied the reasoning of *Roman* to similar facts. The *Romero* court also acknowledged *Wiegand*, yet held that the "Trustee's calculation would artificially inflate the Debtor's income by including, as part of the Debtor's income, the business revenue that would be consumed by business expenses, consequently forcing a longer commitment period under 11 U.S.C. § 1325(b)(4)." *In re Romero*, 2013 WL 241742, at \*3.

In *Ramsey*, the debtor was an attorney who was the sole owner of her law office, which was a professional limited liability company ("PLLC"). The debtor deducted her business expenses pursuant to Form 22C to determine her current monthly income, and the chapter 13 trustee objected. The bankruptcy court acknowledged *Wiegand*'s holding, yet overruled the trustee's objection. The court noted that the law firm was a PLLC and a separate corporate entity, and the chapter 13 trustee had not shown otherwise. The debtor received the net income of the law firm, after business expenses were paid. Thus, the debtor's use of Form 22C to calculate her current monthly income was appropriate.

*Ramsey* is distinguishable from the pending case. The Debtor does not assert that his business is a separate corporate entity. Instead, the Debtor states that he operates a business, and that he should be allowed to deduct business expenses from gross receipts to determine current monthly income, pursuant to Form 122C-1.

The Debtor is incorrect in stating that the *Wiegand* court did not adequately consider Form 22C's requirements in making its ruling. In fact, the BAP noted the conflict between Form 22C and § 1325(b)(2)(B), and held that § 1325(b)(2)(B) controls. Although the *Roman* and *Romero* courts disagreed with *Wiegand*'s reasoning, the weight of authority supports the Trustee's position. As the Trustee notes, numerous other courts have followed *Wiegand*'s statutory interpretation of § 1325(b)(2)(B) and *Wiegand*'s resolution of the conflict in favor of the Code. *See, e.g., In re Kuwik*, 511 B.R. 696 (Bankr. N.D. Ga. 2014); *In re Hoffman*, 511 B.R. 128 (Bankr. D. Minn. 2014); *In re Harkins*, 491 B.R. 518 (Bankr. S.D. Ohio 2013); *In re Sharp*, 394 B.R. 207 (Bankr. C.D. Ill. 2008); *In re Arnold*, 376 B.R. 652 (Bankr. M.D. Tenn. 2007).

Irrespective of whether this Court is bound by decisions of the BAP, the Court's view

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shalva Shalom Krihali**

**Chapter 13**

is that the BAP's reasoning and decision in *Weigand* is correct.

**III. CONCLUSION**

In light of the foregoing, the Court will sustain the Objection.

**Party Information**

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Movant(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber  
Richard Mark Garber  
Richard Mark Garber  
Richard Mark Garber  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11408 Medina Ilagan Garcia**

**Chapter 13**

**#50.00** Debtor's motion to avoid junior lien on principal residence with Real Time Solutions, Inc., its Successors and/or assigns

Docket 15

**Tentative Ruling:**

Grant subject to completion of chapter 13 plan. The claim of this junior lienholder is to be treated as an unsecured claim and to be paid through the plan pro rata with all other unsecured claims.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER, posted on the Court's website, located at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Medina Ilagan Garcia

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case due to expiration of the plan  
fr. 3/13/18; 5/8/18;

Docket 97

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:12-19663 Melissa Mallare Pontanilla and Joey Patrick Pontanilla**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case due to  
expiration of the plan

fr. 4/10/18; 6/12/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Melissa Mallare Pontanilla

Represented By  
Ali R Nader

**Joint Debtor(s):**

Joey Patrick Pontanilla

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:13-11861 Max Shinn Hernandez, IV**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 64

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Max Shinn Hernandez IV

Represented By  
Carlo Reyes

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:13-13496 Lynda Camarillo**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for infeasibility of chapter 13 proceeding in that the plan will not pay out at its present plan payment amount (11 U.S.C. 1307(c))

Docket 104

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Lynda Camarillo

Represented By  
David Turajski - SUSPENDED -  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:13-14996 Peter Ciulan and Maria Ciulan**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for Infeasibility of chapter 13 proceeding in that the plan will not pay out at its present plan payment amount (11 U.S.C. 1307(c))

fr. 6/12/18

Docket 60

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Peter Ciulan

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Maria Ciulan

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 3/13/18; 4/10/18; 6/12/18

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:14-10211 William Joseph Marshall**

**Chapter 13**

**#57.00** Trustee's motion to dismiss due to delinquent plan payments

Docket 130

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

William Joseph Marshall

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14351 Maria Quintana**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maria Quintana

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 11/7/17; 1/9/18; 2/13/18; 4/10/18; 5/8/18;

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/ 8/18; 7/10/18

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13957 Maria G. Luchero**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 80

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maria G. Luchero

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18; 6/12/18

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Brian Igbini

Represented By  
Anthony Obehi Egbase  
Crystle J Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan**

**Chapter 13**

**#63.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Robert Lazar Levitan

Represented By  
Raj T Wadhvani

**Joint Debtor(s):**

Catherine Palmerino Levitan

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11833 Irma Gloria Rivera**

**Chapter 13**

**#64.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 7/10/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Irma Gloria Rivera

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#65.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18; 7/10/18

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:16-13647 Cynthia S. Monaco**

**Chapter 13**

**#66.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Cynthia S. Monaco

Represented By  
Michelle A Marchisotto  
Craig K Streed  
Sundee M Teeple

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10475 Princess Fletcher**

**Chapter 13**

**#67.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/8/18; 7/10/18

Docket 63

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Princess Fletcher

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11135 Jose Orcia Ramirez**

**Chapter 13**

**#68.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Orcia Ramirez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11167 Caridad Salas Hileman**

**Chapter 13**

**#69.00** Trustee's motion to dismiss case for failure to make  
plan payments

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Caridad Salas Hileman

Represented By  
Ryan A. Stubbe

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11773 Josue E. Vargas and Lisa Monica Vargas**

**Chapter 13**

**#70.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 24

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Josue E. Vargas

Represented By  
Frank X Ruggier  
Larry D Simons

**Joint Debtor(s):**

Lisa Monica Vargas

Represented By  
Frank X Ruggier  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:30 AM

**1:13-17940 Jordan Mark Wyatt**

**Chapter 13**

**#71.00 Debtor's motion for hardship discharge**

Docket 57

**Tentative Ruling:**

On June 28, 2018, the chapter 13 trustee (the "Trustee") filed comments [doc. 59] requesting additional information from the debtor, such as information about the debtor's spouse's income, copies of the debtor's tax returns since 2014 and current proof of income. The debtor has not filed a response to the Trustee's comments.

In addition, the debtor has not specified if he is paying alimony and car installment payments for the benefit of his spouse in accordance with a court order. Did a court order the debtor to pay these amounts to his spouse? The debtor must provide this information before the Court rules on the debtor's request for a hardship discharge.

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

**Debtor(s):**

Jordan Mark Wyatt

Represented By  
Sundee M Teeple  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:30 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#72.00** Debtors' motion under local bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 94

**Tentative Ruling:**

On June 27, 2018, the chapter 13 trustee (the "Trustee") filed comments [doc. 98] requesting additional information from the debtors, including information about the debtors' 401k loan payoff date, tax returns for 2016 and 2017 and evidence supporting the debtors' monthly expenses. On July 5, 2018, the Court entered an order instructing the debtors to file a reply to the Trustee's comments no later than July 24, 2018 [doc. 99].

The debtors have not filed a response to the Trustee's comments. The Court will not approve the modification to the debtors' plan unless the debtors provide the information requested by the Trustee.

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:30 AM

**1:14-14351 Maria Quintana**

**Chapter 13**

**#73.00 Debtor's motion for authorization to modify residential mortgage**

Docket 56

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Maria Quintana

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:30 AM

**1:15-13957 Maria G. Luchero**

**Chapter 13**

**#74.00 Debtor's objection to claim by Arvest/Central Mortgage Company  
and notice of response deadline**

fr. 6/12/18

Docket 77

**Tentative Ruling:**

The Court will overrule the debtor's objection to the claim filed by Central Mortgage Company ("CMC").

At the prior hearing on this matter, the debtor asserted that she had made payments to CMC outside of the plan payments the debtor made to the chapter 13 trustee. The Court continued the hearing and instructed the debtor to file a declaration supported by admissible evidence of the debtor's proof of postpetition payments to CMC no later than July 10, 2018. To date, the debtor has not filed proof of any such payments.

The Court also instructed CMC to file a declaration supported by admissible evidence regarding CMC's payment of the debtor's property insurance and tax payments. On July 24, 2018, CMC timely filed a declaration regarding CMC's property insurance and tax payments. The debtor has not responded to this declaration. In light of the fact that the debtor did not file proof of having made additional payments to CMC and given CMC's declaration regarding CMC's property insurance and tax payments, the Court will overrule the debtor's objection to CMC's claim.

CMC must submit an order within seven (7) days.

**6/12/2018 Tentative:**

On March 23, 2016, Central Mortgage Company ("CMC") filed proof of a secured claim in the amount of \$348,491.44. CMC noted that the debtor owed \$30,308.93 in prepetition arrears. On February 19, 2016, the debtor filed an amended chapter 13 plan (the "Plan") [doc. 21]. In the Plan, the debtor proposed paying CMC \$542.76 per month for the duration of the Plan to cure the arrearage of \$27,138.14. On March 17,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Maria G. Luchero**

**Chapter 13**

2016, the Court entered an order confirming the Plan [doc. 44].

On February 6, 2017, the debtor and CMC entered into a stipulation for adequate protection (the "Stipulation") [doc. 61]. Through the Stipulation, the debtor agreed to cure her postpetition default of \$8,010.21. On February 7, 2017, the Court entered an order approving the Stipulation [doc. 63].

On March 13, 2018, the chapter 3 trustee filed the most recent account report [doc. 76], stating that the chapter 13 trustee has paid \$14,962.13 to CMC in accordance with the Plan, with a balance of \$15,346.80 left to be paid through the Plan.

On April 10, 2018, the debtor filed an objection to CMC's claim (the "Objection") [doc. 77]. In the Objection, the debtor states that CMC has not withdrawn its proof of claim despite the fact that the debtor is "current" on the loan. The debtor also states that she is paying monthly impound fees for taxes and insurance payments, but that CMC has not timely paid the debtor's insurance and tax payments. In its response, CMC acknowledges that the debtor is "postpetition current," but does not address the debtor's comments regarding the impound fees.

The debtor did not support the Objection with a declaration. Even if the debtor included a proper declaration, it is unclear to which portion of CMC's claim the debtor objects. To the extent the debtor asserts she is current on her postpetition mortgage payments to CMC, CMC acknowledges as much in its response. If the debtor is asserting that she has cured the prepetition arrearages owed to CMC, the chapter 13 trustee's accounting report reflects that there is a \$15,346.80 balance before the arrearages are cured through the Plan.

In its response, CMC does not address the debtor's assertion that CMC has not timely paid the debtor's insurance and tax payments, thereby resulting in penalties assessed against the debtor. CMC should be prepared to address the impound fees and their application at the hearing on the Objection.

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

**Debtor(s):**

Maria G. Luchero

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 7, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Maria G. Luchero**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#7.10** Motion for relief from stay [RP]

JPMORGAN CHASE BANK, N.A.  
VS  
DEBTOR

fr.7/25/18

Docket 29

**Tentative Ruling:**

**July 25, 2018 Tentative Ruling**

Deny the motion if debtor commences making monthly payments to creditor of \$5,350 by August 1, 2018.

**Party Information**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13186 Kayvan Torabian**

**Chapter 7**

**#1.00** Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.  
VS  
DEBTOR

Docket 40

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Kayvan Torabian

Represented By  
Brent D George

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Leonard Pena

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 303**

9:30 AM

**1:18-11572 Karla Vanessa Calderon**

**Chapter 7**

**#2.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Karla Vanessa Calderon

Represented By  
Daniel King

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10158 Bryan David Blair**

**Chapter 13**

**#3.00** Motion for relief from stay [PP]

DAIMLER TRUST  
VS  
DEBTOR

Docket 49

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Bryan David Blair

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10463 Shawn Adam Johnson and Taniesah Evans**

**Chapter 13**

**#4.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 43

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Shawn Adam Johnson

Represented By  
Joshua L Sternberg

**Joint Debtor(s):**

Taniesah Evans

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10211 Haysun Chang**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING LLC  
VS  
DEBTOR

Docket 36

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Haysun Chang

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11325 Anthony Cesar Morta Montero**

**Chapter 13**

**#6.00** Motion in individual case for order confirming termination of stay under 11 U.S.C. 362(j) or that no stay is in effect under 11 U.S.C. 362(c)(4)(A)(ii)

Docket 20

**Tentative Ruling:**

This case was dismissed on August 6, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Anthony Cesar Morta Montero

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Anthony Cesar Morta Montero**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11785 ESTHER OCAMPO**

**Chapter 13**

**#7.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 8

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

ESTHER OCAMPO

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

1:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:18-01017 Weil v. Cazares

**#8.00** Status conference re: complaint for avoidance and recovery  
of preferential transfer

fr. 5/9/18

Docket 1

\*\*\* VACATED \*\*\* REASON: Notice of dismissal under Rule 41(a) on  
7/24/18 [doc. 9].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Andrew Edward Smyth  
Stephen S Smyth

**Defendant(s):**

Gina Cazares

Pro Se

**Plaintiff(s):**

Diane C. Weil

Represented By  
C John M Melissinos

**Trustee(s):**

Diane C Weil (TR)

Represented By  
C John M Melissinos

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 8, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#9.00** Pretrial conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 6/7/18.  
Hearing continued to 8/22/18 at 1:30 PM.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 9, 2018**

**Hearing Room 301**

1:00 PM

**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#1.00** Post confirmation status conference re chapter 11 case

fr. 3/3/16; 9/15/16; 11/10/16; 2/16/17; 4/20/17; 7/13/17;  
10/5/17; 12/21/17; 2/14/18; 4/12/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order for final decree entered 7/18/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 9, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11856 Blue Ocean Spg Inc**

**Chapter 7**

**#2.00** Order to show cause re: dismissal

Docket 1

**Tentative Ruling:**

The Court will dismiss this case. The debtor has not filed a petition and otherwise appeared with counsel as required by LBR 9011-2(a).

The Court will prepare the order.

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

**Debtor(s):**

Blue Ocean Spg Inc

Pro Se

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 9, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#3.00** Status conference re chapter 11 case

fr. 7/5/18; 7/26/18

Docket 1

**Tentative Ruling:**

What is the status of the settlement agreement (among the chapter 7 trustee, the class action plaintiffs and the debtor) and the motion for conditional dismissal?

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 9, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#4.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17; 2/14/18; 4/4/18; 5/9/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: continued to 8/15/18 at 2:30pm**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 9, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10885 Qiuling Sun Kai**

**Chapter 7**

- #5.00** Trustee's Motion for Order Authorizing Sale of Real Property:  
(A) Outside the Ordinary Course of Business  
(B) Free & Clear of Interests  
(C) Subject to Overbids  
(D) For Determination of Good Faith Purchaser Under Section 363(m)

Docket 31

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Qiuling Sun Kai

Represented By  
William E Windham

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
D Edward Hays  
Laila Masud

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, August 15, 2018

Hearing Room 301

9:30 AM

1:17-12748 Mercedes Benitez

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

from: 6/13/18; 7/18/18

Docket 39

\*\*\* VACATED \*\*\* REASON: APO entered 8/13/18 [doc. 47]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mercedes Benitez

Represented By  
Matthew D Resnik  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11172 Madeleine Brockway**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

HSBC BANK USA, N.A.  
VS  
DEBTOR

from: 6/6/18; 7/11/18

Docket 38

**\*\*\* VACATED \*\*\* REASON: APO entered on 7/25/18 [doc. 45]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Madeleine Brockway

Represented By  
Tawni Takagi

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11325 Anthony Cesar Morta Montero**

**Chapter 13**

**#3.00 Motion for relief from stay [RP]**

PENNYMAC CORP  
VS  
DEBTOR

fr. 7/25/18

Docket 16

**Tentative Ruling:**

This case was dismissed on August 6, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Anthony Cesar Morta Montero Chapter 13**

required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Anthony Cesar Morta Montero	Pro Se
-----------------------------	--------

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan**

**Chapter 13**

**#3.10** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 8/1/18

Docket 39

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Lazar Levitan

Represented By  
Raj T Wadhvani

**Joint Debtor(s):**

Catherine Palmerino Levitan

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10689 Geraldine S Frost**

**Chapter 13**

**#4.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 4/11/18; 6/7/18; 6/6/18

Docket 6

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 7/5/18.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Geraldine S Frost

Represented By  
Shirlee L Bliss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11490 Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**#5.00** Motion for relief from stay [AN]

CHRISTOPHER VEKLOTZ ET AL  
VS  
DEBTOR

Docket 5

**Tentative Ruling:**

Grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Movant states that it seeks recovery only from applicable insurance and waives any deficiency or claim against the debtor or property of the debtor's bankruptcy estate.

Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor and property of the Debtor's bankruptcy estate.

Deny request for annulment. Movant has not identified what acts, if any, were taken without knowledge of the automatic stay in the debtor's case.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**Debtor(s):**

Silver Age None-Emergency

Represented By  
David S Hagen

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11230 Haydee Batres**

**Chapter 7**

**#6.00** Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Haydee Batres

Represented By  
Luis G Torres

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11524 Jose Luis Chavez**

**Chapter 13**

**#7.00** Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

Docket 16

**Tentative Ruling:**

This case was dismissed on August 6, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jose Luis Chavez

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Jose Luis Chavez**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10038 Oganesh Pashayan and Anahit Pashayan**

**Chapter 13**

**#8.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 37

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Oganesh Pashayan

Represented By  
Abraham Dervishian

**Joint Debtor(s):**

Anahit Pashayan

Represented By  
Abraham Dervishian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12317 Yuliy Mosk**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING LLC  
VS  
DEBTOR

Docket 56

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Yuliy Mosk

Represented By  
Alla Tenina

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11801 Rudex Broadcasting Limited Corp.**

**Chapter 11**

**#10.00** Motion for relief from stay [UD]

LUIS CRESCITELLI  
VS  
DEBTOR

Docket 6

**\*\*\* VACATED \*\*\* REASON: No chambers copy of motion provided.  
Motion is not on calendar.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Rudex Broadcasting Limited Corp.

Represented By  
Michael D Kwasigroch

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

1:30 PM

**1:12-16951 Walter James Burns**

**Chapter 13**

Adv#: 1:17-01109 Burns v. Education Credit Management Corporation et al

**#11.00** Pretrial conference re complaint to determine dischargeability of student loans

from: 2/14/18; 6/13/18(stip)

**Stip filed 6/20/18**

Docket 3

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 6/21/18  
continuing hearing to 10/3/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Defendant(s):**

Education Credit Management

Pro Se

PHEAA

Pro Se

United States Department of

Pro Se

**Plaintiff(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#12.00** Trial re first amended complaint to determine dischargeability of indebtedness [FOR RULING]

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18; 6/4/18

Docket 12

**Tentative Ruling:**

Continued to August 22, 2018 at 2:30 p.m.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10673 Hermann Muennichow**  
Adv#: 1:17-01058 Van Dyke v. Muennichow

**Chapter 7**

**#13.00** Motion by plaintiff to substitute John Van Dyke as defendant

Docket 55

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On March 16, 2017, Hermann Muennichow ("Defendant") filed a voluntary chapter 7 petition. On June 12, 2017, Duane J. Van Dyke ("Plaintiff") filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6) and (a)(14) and requesting denial of Defendant's discharge under 11 U.S.C. § 727. On August 22, 2017, Defendant filed an answer to the Complaint [doc. 13].

On November 11, 2017, Defendant passed away [doc. 30, Exhibit A]. On June 5, 2018, Plaintiff filed a motion to substitute Helayne Muennichow as defendant (the "Original Motion to Substitute") [doc. 45]. Ms. Muennichow opposed the Motion [doc. 51]. On July 18, 2018, the Court held a hearing on the Original Motion to Substitute. At that time, the Court decided that the Court would continue the hearing until the probate court appointed a representative of Defendant's estate.

On July 13, 2018, the probate court held a hearing on the appointment of a representative of Defendant's estate. Declaration of Kelly Warren ("Warren Declaration"), ¶ 7, Exhibit 1. In a minute order issued by the probate court (the "Minute Order"), the probate court appointed Mr. Van Dyke as the personal representative of Defendant's estate. *Id.* On July 20, 2018, Plaintiff filed a motion to substitute Mr. Van Dyke as defendant (the "Motion") [doc. 55]. A timely response to the Motion has not been filed.

**II. ANALYSIS**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

Pursuant to Federal Rule of Civil Procedure 25(a)(1)—

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Pursuant to Cal. Civ. Proc. Code § 377.41—

On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against *the decedent's personal representative* or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made.

(emphasis added). "[T]rial cannot proceed and judgment cannot be given for or against the decedent, nor for or against the decedent's personal representative until the latter has been made a party by substitution." *Johnson v. Simonelli*, 231 Cal.App.3d 105, 107 n.1 (Ct. App.1991); *see also Fox v. Cty. of Tulare*, 2014 WL 897040, at \*6 (E.D. Cal. Mar. 6, 2014).

Only the state probate court is empowered to appoint a personal representative of a decedent's estate. *Hassanati v. Int'l Lease Fin. Corp.*, 51 F.Supp.3d 887, 896 (C.D. Cal. 2014), *aff'd sub nom. Hassanati ex rel. Said v. Int'l Lease Fin. Corp.*, 643 F. App'x 620 (9th Cir. 2016) ("The court cannot issue the order plaintiffs seek because the appointment of personal representatives falls squarely within the probate exception."); *Sequoia Prop. & Equip. Ltd. P'ship v. United States*, 2002 WL 32388132, at \*3 (E.D. Cal. June 3, 2002) ("[T]he Government seeks this Court's appointment of Mr. Crisp as Mrs. Crisp's personal representative. However, a state probate court, not a federal court, is empowered to make such an appointment."); *and* William W. Schwarzer, A. Wallace Tashima, James M. Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial ¶ 2:1699 (The Rutter Group 2013) ("The



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

probate exception prohibits federal courts from exercising jurisdiction over property in the possession of fiduciaries appointed by a state court. This includes removal and/or appointment of a personal representative of the decedent's estate because this clearly would interfere with administration of the estate.").

Here, the probate court appointed Mr. Van Dyke as the representative of Defendant's estate. Given that the personal representative of an estate is the proper party in interest to substitute into an action in place of a decedent, Cal. Civ. Proc. Code § 377.41, the Court will grant the Motion and substitute Mr. Van Dyke as the defendant in this adversary proceeding.

**III. CONCLUSION**

The Court will grant the Motion.

Plaintiff must submit an order within seven (7) days.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#14.00** Plaintiff's motion to substitute Helayne Muennichow  
as Defendant

fr. 7/18/18

Docket 45

**Tentative Ruling:**

In light of the appointment of John Van Dyke as the personal representative of the defendant's estate, and the *Motion by Plaintiff to Substitute John Van Dyke as Defendant* [doc. 55], this motion is denied as moot.

The plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#15.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17; 2/14/18; 4/4/18; 5/9/18; 8/9/18

Docket 1

**Tentative Ruling:**

In light of the identity of the personal representative of the defendant's estate and the death of the defendant, how do the parties envision prosecuting this matter?

Should the Court continue this status conference to a date after the mediation the parties intend to pursue, as set forth in the *Stipulation re Extension of Pre-Trial Stipulation Filing Deadline and Continuance of Pre-Trial Conference to Pursue Expanded Settlement Discussions via Mediation* [1:17-ap-01069-VK, doc. 51]?

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10762 Jaime R Lara**

**Chapter 7**

Adv#: 1:18-01069 Lara v. Lara et al

**#16.00** Chapter 7 Trustee's motion to dismiss complaint pursuant to Rules 12(b)(4), (5), and (6) of the Federal Rules of Civil Procedure

Docket 5

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On March 26, 2018, Jaime R. Lara ("Debtor") filed a voluntary chapter 7 petition. Diane C. Weil was appointed the chapter 7 trustee (the "Trustee").

In his schedule A/B [doc. 19], Debtor listed an interest in an account (the "Escrow Account") with Greater LA Escrow, Inc. ("Greater LA") and indicated that the Escrow Account contained \$190,000. In a separate section, Debtor also listed an interest in "[r]esidue from the sale of the community property family residence" in the amount of \$190,000. In his schedule E/F, Debtor listed an unsecured claim in favor of Benjamin C. Lara ("Plaintiff") in the amount of \$144,300. Debtor noted that the claim arose from contract work and services.

On May 10, 2018, Plaintiff filed a complaint (the "Complaint") against Debtor, Diane E. Lara, Greater LA and the Jaime Romero Lara and Diane Elise Lara Joint Living Trust (the "Trust" and, collectively, "Defendants") in state court (the "State Court Action"). Notice of Removal, Exhibit 1. In the Complaint, Plaintiff alleges, in relevant part:

Debtor is Plaintiff's father. Debtor previously resided at the real property located at 742 Andover Drive, Burbank, California 91504 (the "Property").

On August 1, 2006, Plaintiff entered into a personal services contract with Debtor for the construction repair and modification of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jaime R Lara**

**Chapter 7**

Property (the "Agreement"). The Agreement provided that: (A) Plaintiff would pay for half of the mortgage and utilities as his investment; and (B) that, in the event of the sale of the Property, Plaintiff will be reimbursed for his investment. Debtor and Ms. Lara also agreed to fully repay Plaintiff for his services in the event of a sale of the Property and executed a will and testament including these provisions. The will was then placed into the Trust.

On May 5, 2017, Ms. Lara initiated legal separation proceedings against Debtor. On July 6, 2017, Debtor and Ms. Lara sold the Property. Greater LA is currently holding the sale proceeds in the Escrow Account. On March 26, 2018, after filing this bankruptcy case, Debtor made a written demand on Greater LA for disbursement of his share of the funds in the Escrow Account. Greater LA has refused to disburse the funds to Debtor in violation of 11 U.S.C. § 362. On the same day, Plaintiff made a written demand on Debtor and Ms. Lara for payment of his costs, expenses and investment in the Property in the amount of \$317,100.

In light of the above, Plaintiff requests a temporary and permanent injunction and declaratory relief against Defendants. Plaintiff also asserts the following causes of action: (A) breach of contract; (B) breach of the implied covenant of good faith and fair dealing; (C) fraud; (D) equitable estoppel; and (E) defamation (against Ms. Lara alone, stemming from Ms. Lara's allegations that Plaintiff conspired with Debtor to deprive Ms. Lara of community property).

Notice of Removal, Exhibit 1. On May 18, 2018, Debtor filed amended schedules [doc. 19]. In his amended schedule A/B, Debtor indicated that he has an interest in deposits of money, but did not specify any accounts in which he had an interest. In other words, in his amended schedule A/B, Debtor omitted the information about the Escrow Account. In the amended schedule A/B, Debtor added his interest in the Jaime Romeo Lara and Diana Elise Joint Living Trust (the "Trust"). Debtor stated that the Trust is worth \$400,000. In his amended schedule E/F, Debtor listed a \$317,100 claim in favor of Plaintiff and noted that the claim arose from contract work and mortgage payments.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jaime R Lara**

**Chapter 7**

On June 7, 2018, the Trustee removed the State Court Action to this Court. On the same day, the Court issued an Order to Show Cause re: Remand (the "OSC") [doc. 3].

On June 14, 2018, the Trustee filed a motion to dismiss the Complaint (the "Motion") [doc. 5], on the basis that the State Court Action is void as a violation of the automatic stay because: (A) it is an action against Debtor and (B) Plaintiff seeks dominion over property of the estate through the State Court Action. The Trustee also asserts that Plaintiff did not serve the Trustee. On June 20, 2018, Greater LA filed a joinder to the Motion [doc. 10]. On July 3, 2018, the Trustee filed a response to the OSC (the "Response") [doc. 13], asserting that this Court has jurisdiction over the State Court Action and that the Court should refrain from remanding the State Court Action because the State Court Action is a violation of the automatic stay.

On the same day, the Trustee and Plaintiff filed a joint status report (the "Status Report") [doc. 14]. In the Status Report, the Trustee requests that this status conference be continued until the Court resolves the Motion to Dismiss. Plaintiff notes that, on June 29, 2018, he filed a request for dismissal of Debtor as a defendant in the State Court Action with the state court and, as a result, the Court does not have jurisdiction over this matter. The Trustee notes that Plaintiff's request for dismissal is a nullity because it was filed in state court after the Trustee removed the State Court Action to this Court. To date, Plaintiff has not filed a response to the Motion.

## **II. ANALYSIS**

### ***A. Federal Rule of Civil Procedure ("Rule") 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jaime R Lara**

**Chapter 7**

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Further, a court may consider 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 copy attached to the [Rule] 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). "The court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

***B. Violation of the Automatic Stay***

11 U.S.C. § 362 provides, in pertinent part:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 15, 2018

Hearing Room 301

2:30 PM

CONT...

**Jaime R Lara**

**Chapter 7**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment 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;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (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;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title....

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). "Void acts cannot be cured or ratified." *In re Oakhurst Lodge, Inc.*, 582 B.R. 784, 798 (Bankr. E.D. Cal. 2018) (citing *Schwartz*, 954 F.2d at 571). "For voidness purposes, it makes no difference whether the stay violator was aware of the stay when he or she violated the stay. Regardless, all acts and judicial proceedings undertaken in violation of the stay are void." *In re Carter*, 2016 WL 1704719, at \*4 (B.A.P. 9th Cir. Apr. 22, 2016), *aff'd*, 695 F. App'x 307 (9th Cir. 2017) (internal citations omitted).

"In cases involving multiple parties or multiple claims, the courts have 'disaggregated' the proceedings so that claims against co-defendants who are not under the protection of the bankruptcy court may go forward, as well as claims for which stay is unnecessary to protect the debtor." *Seiko Epson Corp. v. Nu-Kote Int'l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999) (citing *In re Chugach Forest Prods., Inc.*, 23 F.3d 241, 246 (9th Cir. 1994)). "It is clearly established that the automatic stay does not apply to non-bankrupt co-defendants of a debtor 'even if they are in a similar legal or factual nexus with the debtor.'" *Id.* (quoting *Maritime Elect. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir. 1991)).

Here, with the exception of the claim of defamation against Ms. Lara, the State Court



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jaime R Lara**

**Chapter 7**

Action, to the extent it concerns claims against Debtor or property of the estate, is void. Apart from the defamation claim, these claims were asserted in violation of the automatic stay. As noted above, void acts cannot be cured or ratified. *Oakhurst Lodge*, 582 B.R. at 798.

Because Plaintiff asserts the defamation claim against Ms. Lara alone, and a judgment of defamation against Ms. Lara would not necessarily implicate property of the estate, the automatic stay does not protect Ms. Lara or her separate property from litigation and potential judgment. Consequently, the Court will dismiss all claims asserted in the Complaint except for the defamation claim against Ms. Lara.

**C. Rules 12(b)(4) and 12(b)(5)**

Alternatively, the Complaint also may be dismissed for insufficient service of process. Pursuant to Rules 12(b)(4) and (b)(5), "a party may assert the following defenses by motion... insufficient process [and] insufficient service of process...."

"An action must be prosecuted in the name of the real party in interest." Rule 17(a)(1). Rule 17 "allows a federal court to entertain a suit at the instance of any party to whom the relevant substantive law grants a cause of action." *U-Haul Intern., Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1038 (9th Cir. 1986). In a chapter 7 case, the chapter 7 trustee is the proper party to enforce the rights of an estate and to defend the estate. 11 U.S.C. § 323(a) ("The trustee in a case is the representative of the estate."). "The trustee in a case under this title has capacity to sue and *be sued*." 11 U.S.C. § 323(b) (emphasis added). As a result, in a chapter 7 case, the chapter 7 trustee is the property party in interest to defend the estate.

Here, Plaintiff served Debtor instead of the Trustee. As the Trustee is the proper party in interest, the Court would normally dismiss the Complaint until Plaintiff properly served the Trustee in accordance with the Federal Rules of Civil Procedure. However, because all of the claims against Debtor and the estate are dismissed as a violation of the automatic stay, this issue is moot.

**III. CONCLUSION**

The Court will dismiss all of the claims except the claim of defamation against Ms.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jaime R Lara**

**Chapter 7**

Lara. As discussed in the Court's tentative ruling regarding remand (Cal #17), the Court will remand the defamation claim to state court.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Jaime R Lara	Pro Se
--------------	--------

**Defendant(s):**

Jaime R Lara	Pro Se
--------------	--------

Diane E Lara	Pro Se
--------------	--------

Greaterla Escrow, Inc.	Represented By Fredric J Greenblatt
------------------------	--

Jaime Romero Lara and Diane Elise	Pro Se
-----------------------------------	--------

**Plaintiff(s):**

Benjamin C Lara	Pro Se
-----------------	--------

**Trustee(s):**

Diane C Weil (TR)	Represented By Elissa Miller Claire K Wu
-------------------	--

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10762 Jaime R Lara**

**Chapter 7**

Adv#: 1:18-01069 Lara v. Lara et al

**#17.00** Status conference re removal of state court action  
to bankruptcy court

fr. 7/18/18

Docket 1

**Tentative Ruling:**

The Court will remand the defamation claim to state court.

**I. BACKGROUND**

On March 26, 2018, Jaime R. Lara ("Debtor") filed a voluntary chapter 7 petition. Diane C. Weil was appointed the chapter 7 trustee (the "Trustee").

In his schedule A/B [doc. 19], Debtor listed an interest in an account (the "Escrow Account") with Greater LA Escrow, Inc. ("Greater LA") and indicated that the Escrow Account contained \$190,000. In a separate section, Debtor also listed an interest in "[r]esidue from the sale of the community property family residence" in the amount of \$190,000. In his schedule E/F, Debtor listed an unsecured claim in favor of Benjamin C. Lara ("Plaintiff") in the amount of \$144,300. Debtor noted that the claim arose from contract work and services.

On May 10, 2018, Plaintiff filed a complaint (the "Complaint") against Debtor, Diane E. Lara, Greater LA and the Jaime Romero Lara and Diane Elise Lara Joint Living Trust (the "Trust" and, collectively, "Defendants") in state court (the "State Court Action"). Notice of Removal, Exhibit 1. In the Complaint, Plaintiff alleges, in relevant part:

Debtor is Plaintiff's father. Debtor previously resided at the real property located at 742 Andover Drive, Burbank, California 91504 (the "Property").

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jaime R Lara**

**Chapter 7**

On August 1, 2006, Plaintiff entered into a personal services contract with Debtor for the construction repair and modification of the Property (the "Agreement"). The Agreement provided that: (A) Plaintiff would pay for half of the mortgage and utilities as his investment; and (B) that, in the event of the sale of the Property, Plaintiff will be reimbursed for his investment. Debtor and Ms. Lara also agreed to fully repay Plaintiff for his services in the event of a sale of the Property and executed a will and testament including these provisions. The will was then placed into the Trust.

On May 5, 2017, Ms. Lara initiated legal separation proceedings against Debtor. On July 6, 2017, Debtor and Ms. Lara sold the Property. Greater LA is currently holding the sale proceeds in the Escrow Account. On March 26, 2018, after filing this bankruptcy case, Debtor made a written demand on Greater LA for disbursement of his share of the funds in the Escrow Account. Greater LA has refused to disburse the funds to Debtor in violation of 11 U.S.C. § 362. On the same day, Plaintiff made a written demand on Debtor and Ms. Lara for payment of his costs, expenses and investment in the Property in the amount of \$317,100.

In light of the above, Plaintiff requests a temporary and permanent injunction and declaratory relief against Defendants. Plaintiff also asserts the following causes of action: (A) breach of contract; (B) breach of the implied covenant of good faith and fair dealing; (C) fraud; (D) equitable estoppel; and (E) defamation (against Ms. Lara alone, stemming from Ms. Lara's allegations that Plaintiff conspired with Debtor to deprive Ms. Lara of community property).

Notice of Removal, Exhibit 1. On May 18, 2018, Debtor filed amended schedules [doc. 19]. In his amended schedule A/B, Debtor indicated that he has an interest in deposits of money, but did not specify any accounts in which he had an interest. In other words, in his amended schedule A/B, Debtor omitted the information about the Escrow Account. In the amended schedule A/B, Debtor added his interest in the Jaime Romeo Lara and Diana Elise Joint Living Trust (the "Trust"). Debtor stated that the Trust is worth \$400,000. In his amended schedule E/F, Debtor listed a \$317,100 claim in favor of Plaintiff and noted that the claim arose from contract work

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Jaime R Lara**  
and mortgage payments.

**Chapter 7**

On June 7, 2018, the Trustee removed the State Court Action to this Court. On the same day, the Court issued an Order to Show Cause re: Remand (the "OSC") [doc. 3].

On June 14, 2018, the Trustee filed a motion to dismiss this adversary proceeding (the "Motion to Dismiss") [doc. 5], on the basis that the State Court Action is void as a violation of the automatic stay because: (A) it is an action against Debtor and (B) Plaintiff seeks dominion over property of the estate through the State Court Action. On July 3, 2018, the Trustee filed a response to the OSC (the "Response") [doc. 13], asserting that this Court has jurisdiction over the State Court Action and that the Court should refrain from remanding the State Court Action because the State Court Action is a violation of the automatic stay.

On the same day, the Trustee and Plaintiff filed a joint status report (the "Status Report") [doc. 14]. The remaining Defendants did not contribute to the Status Report. In the Status Report, the Trustee requests that this status conference be continued until the Court resolves the Motion to Dismiss. Plaintiff notes that, on June 29, 2018, he filed a request for dismissal of Debtor as a defendant in the State Court Action with the state court and, as a result, the Court does not have jurisdiction over this matter. The Trustee notes that Plaintiff's request for dismissal is a nullity because it was filed in state court after the Trustee removed the State Court Action to this Court.

## **II. ANALYSIS**

### ***A. Subject Matter Jurisdiction***

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441 – 1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jaime R Lara**

**Chapter 7**

claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

The Court strictly construes the removal statutes against removal jurisdiction, and jurisdiction must be rejected if there is any doubt as to the right of removal. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992). The party seeking removal bears the burden of establishing federal jurisdiction. *Id.*

Moreover, under the well-pleaded complaint rule, "[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987).

Parties cannot consent to subject matter jurisdiction. *Clapp v. Commissioner*, 875 F.2d 1396, 1398 (9th Cir. 1989) ("Subject matter jurisdiction cannot be conferred upon the court by consent or waiver."); and *In re Marshall*, 264 B.R. 609, 619 (C.D. Cal. 2001) ("[I]n so far as the issue is the actual subject matter jurisdiction of the federal courts, rather than just the bankruptcy court's power to enter a final judgment, such jurisdiction cannot be conferred by consent.").

As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**     **Jaime R Lara**  
1124, 1131 (9th Cir. 2010).

**Chapter 7**

2.     Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . . ." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11 . . . ." 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3.     Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the 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 (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Pegasus Gold Corp.*, 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

A bankruptcy court's "related to" jurisdiction "cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 1499, 131 L.Ed. 2d 403 (1995). "[R]

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jaime R Lara**

**Chapter 7**

related to' jurisdiction is not as broad in a Chapter 7 liquidation proceeding as in a Chapter 11 reorganization proceeding." *Cardinalli v. Superior Court for Cty. of Monterey*, 2013 WL 5961098, at \*3 (N.D. Cal. Nov. 7, 2013).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at \*10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, with the exception of Plaintiff's claim of defamation against Ms. Lara, the Court has jurisdiction over the State Court Action. The remaining claims all involve Plaintiff's attempt to recover the funds in the Escrow Account, which Debtor and the Trustee assert are property of Debtor's bankruptcy estate. Although Plaintiff asserts in the Status Report that he has dismissed Debtor from the action, first, as noted by the Trustee, the request for dismissal is a nullity because it was filed with the state court after the State Court Action was removed to this Court. Second, even if Plaintiff dismissed Debtor, Plaintiff still seeks to recover property of the estate through the State Court Action. As such, dismissing Debtor does not extinguish this Court's jurisdiction over this matter.

On the other hand, the defamation claim against Ms. Lara is a claim against a nondebtor party that does not involve recovery of property of the estate. Although the defamation claim arises from Ms. Lara's alleged accusations of collusion between Plaintiff and Debtor, the claim is asserted solely against Ms. Lara and, should a court enter a judgment in favor of Plaintiff, Plaintiff may pursue Ms. Lara and her separate property for recovery. Plaintiff's success or failure on the defamation claim will not have an effect on Debtor's bankruptcy case; the estate does not stand to gain or lose anything from Plaintiff's prosecution of that claim against Ms. Lara. As discussed below, even if the Court has subject matter jurisdiction over the defamation claim, the Court will remand that claim to state court.

***B. Remand***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jaime R Lara**

**Chapter 7**

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

*Id.*, 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Jaime R Lara**  
C.D. Cal. 2007).

**Chapter 7**

In light of the Court's ruling on the Motion to Dismiss, most of Plaintiff's claims are dismissed as a violation of the automatic stay. The one remaining claim is the defamation claim against Ms. Lara. The defamation claim will not have any effect on the efficient administration of the estate and is, at best, remotely related to the main bankruptcy case. In addition, the claim is based entirely on state law and there is no jurisdictional basis, if any, other than 28 U.S.C. § 1334. Moreover, the defamation claim involves two nondebtor parties, and comity favors remand of this matter to state court. Consequently, even if the Court has jurisdiction over the defamation claim, the Court will remand the defamation claim.

**III. CONCLUSION**

The Court will remand the defamation claim to state court.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Jaime R Lara	Pro Se
--------------	--------

**Defendant(s):**

Jaime R Lara	Pro Se
--------------	--------

Diane E Lara	Pro Se
--------------	--------

Greaterla Escrow, Inc.	Pro Se
------------------------	--------

Jaime Romero Lara and Diane Elise	Pro Se
-----------------------------------	--------

**Plaintiff(s):**

Benjamin C Lara	Pro Se
-----------------	--------

**Trustee(s):**

Diane C Weil (TR)	Represented By Elissa Miller
-------------------	---------------------------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 15, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT...**

**Jaime R Lara**

Claire K Wu

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12037 Menar Construction Co.**

**Chapter 7**

**#1.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Trustee

fr. 7/19/18

Docket 54

**Tentative Ruling:**

Grant in part and deny in part.

On September 12, 2016, Menar Construction Co. (the "Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On January 12, 2017, Toraaj Soroor ("Creditor") filed claim 1-1 in the amount of \$11,045, based on an award to Creditor from the Contractor's State Licensing Board (the "CSLB") arising from a construction negligence complaint.

On July 26, 2017, the Trustee filed an application to employ Menchaca & Company LLP ("Menchaca") as accountant (the "Menchaca Employment Application") [doc. 29]. On August 28, 2017, the Court entered an order approving the Menchaca Application [doc. 33].

On January 18, 2018, the Trustee filed a motion to approve a compromise of controversy with Behrooz Sarange, the Debtor's former principal (the "Compromise Motion") [doc. 45]. Under the terms of the proposed compromise, Mr. Sarange would pay \$6,000 to the estate. In the Compromise Motion, the Trustee stated that the CSLB had released a bond that the Debtor had previously posted, resulting in \$11,045 gain to the estate. The Trustee further represented that Mr. Sarange's payment and the funds released by the CSLB would be sufficient to pay all claims in full. On February 8, 2018, the Court entered an order granting the Compromise Motion [doc. 48].

On March 6, 2018, the Franchise Tax Board (the "FTB") filed claim 2-1 in the amount

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Menar Construction Co.**

**Chapter 7**

of \$823.54 as a priority claim. On March 6, 2018, the FTB filed claim 3-1 in the amount of \$1,629.28 as an administrative claim. On March 29, 2018, the FTB filed amended claim 3-2 in the amount of \$2,099.29 as an administrative claim.

On March 19, 2018, Menchaca filed its fee application (the "Menchaca Fee Application") [doc. 52]. On May 30, 2018, the Trustee filed his final report and application for compensation (the "Trustee's Final Report") [doc. 54].

On July 19, 2018, the Court held a hearing on the Trustee's Final Report and the Menchaca Fee Application. Counsel for Creditor appeared and objected to the payment of professional fees as proposed in the Trustee's Final Report, on the grounds that the Trustee had stated in the Compromise Motion that all claims would be paid in full. The Court continued the hearing to August 16, 2018. Creditor was instructed to file a written objection by August 2, 2018. The Trustee was instructed to file a response by August 9, 2018.

On July 31, 2018, Creditor's counsel filed her declaration in objection [doc. 59]. Creditor's counsel states that on October 27, 2017, Creditor attended a hearing before the Trustee. Creditor and Trustee agreed that Creditor would accept \$9,000 in satisfaction of his claim, provided that:

- The Debtor's counsel would file a compromise motion within 30 to 60 days;
- The Debtor would submit \$6,000 to the Trustee to assure there would be sufficient funds to cover "everything";
- If a compromise motion was not timely filed, the full amount of \$11,045 would become due and payable forthwith.

The Debtor's counsel did not timely file the compromise motion. On January 12, 2018, the parties communicated with the Trustee. The Trustee represented that Creditor would be paid the full amount of \$11,045; however, the Final Report states that Creditor will be receiving approximately \$8,500.

On August 7, 2018, the Trustee filed his response [doc. 60]. The Trustee does not dispute Creditor's narrative of events. The Trustee notes that, after the Compromise

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Menar Construction Co.**

**Chapter 7**

Motion was filed, the FTB filed additional claims against the Debtor's estate. The Trustee determined that the FTB claims had to be paid prior to any distribution to Creditor.

11 U.S.C. § 326(a) sets forth the maximum compensation for chapter 7 trustees in a given case. Pursuant to 11 U.S.C. § 330(a)(2), "[t]he court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested."

Here, the Trustee collected the Debtor's bond from the CSLB and compromised a claim with the Debtor's principal. This case was not complex and only one nonpriority unsecured claim—Creditor's—was filed. In the Compromise Motion, the Trustee represented to the Court that the claims bar date had passed, and that in light of the funds to be paid by Mr. Sarange, all claims would be paid in full. Although the FTB filed its claims after the Court granted the Compromise Motion, the Trustee's accountant, Menchaca, could have more accurately assessed the estate's potential tax liability.

In light of the circumstances of this case, the Court will award fees and expenses as follows:

David Seror, Trustee – approve fees of \$2,000.00 and reimbursement of expenses of \$85.39. The Court has not approved \$454.50 in fees for the reasons stated above.

Menchaca, accountant to the Trustee – approve fees of \$3,205.50 and reimbursement of expenses of \$94.34.

The Trustee must submit the order within seven (7) days of the hearing.

**Party Information**

**Debtor(s):**

Menar Construction Co.

Represented By  
Dominic Afzali

**Trustee(s):**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Menar Construction Co.**

**Chapter 7**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 303**

10:30 AM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#2.00** First Interim application of Law Offices of Robert M Yaspan, for compensation and reimbursement of expenses incurred as counsel to debtor-in-possession

Docket 136

**Tentative Ruling:**

Continue hearing to **September 6, 2018 at 10:30 a.m.**

Contrary to Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(A)(iii), in the fee application, applicant has not disclosed the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. Contrary to LBR 2016-1(a)(1)(J), the applicant has not filed a declaration from the debtor indicating that the debtor has reviewed the fee application and has no objection to it.

No later than **August 30, 2018**, the debtor must file a declaration discussing and demonstrating her ability to pay the approved fees and expenses, and indicating her review of and consent to the fees requested in the application.

Appearances on August 16, 2018 are excused.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:14-15621 Edward D. Roane**

**Chapter 11**

**#3.00** Post confirmation status conference re chapter 11 case

fr. 6/18/15; 10/22/15; 12/3/15; 12/17/15; 2/4/16; 6/16/16; 12/15/16; 4/20/17;  
8/17/17; 2/14/18

Docket 1

**Tentative Ruling:**

Based on the *Chapter 11 Sixth Post-Confirmation Status Report* [doc. 200], the Court will continue the post-confirmation status conference to **February 21, 2019 at 1:00 p.m.** On or before **February 7, 2019**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. The Court will vacate the continued post-confirmation status conference if an order granting the reorganized debtor a final decree and closing the case is entered prior to the continued hearing date.

Appearances on August 16, 2018 are excused.

**Party Information**

**Debtor(s):**

Edward D. Roane

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#4.00 Confirmation hearing re First Amended Chapter 11 Plan**

fr. 5/3/18(stip); 6/7/18(stip), 7/19/18(stip)

Docket 114

**Tentative Ruling:**

Because of the Court's concerns regarding the feasibility of the debtor's proposed chapter 11 plan and whether that plan pays the entire claim of the objecting creditor, in order for the parties to address those issues with supplemental evidence, the Court will continue this hearing.

***Feasibility***

"The debtor carries the burden of proving that a Chapter 11 plan complies with the statutory requirements for confirmation under §§ 1129(a) & (b)." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir. B.A.P. 1994), *aff'd*, 85 F.3d 1415 (9th Cir. 1996). Pursuant to 11 U.S.C. § 1123(a)(5), a chapter 11 plan must provide adequate means for the plan's implementation. Pursuant to 11 U.S.C. § 1129(a)(11), a court can confirm a plan only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The debtor states that he will fund his *First Amended Chapter 11 Plan of Reorganization* (the "Plan") from his regular employment income, his consulting income, distributions/dividends from Master Strategic Group, Inc., his spouse's regular and consulting income, funds in the DIP account, and contributions from his brother. (Brief, doc. 162, at p. 21.) The debtor's average monthly income, as stated in his last six monthly operating reports, is \$15,079.17. The debtor's brother is projected to contribute \$14,700 per month. (Declaration of Dr. Paul A. Nassif, doc. 162, at p. 40.) The debtor's average monthly income, plus his brother's projected contribution, totals \$29,779.17. This amount is less than the \$33,211 projected monthly income stated in the cash flow projections attached to the *First Amended Disclosure Statement*. (Doc. 113, Exh. B.) This amount is also less than the \$33,101 in projected

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

monthly expenses. (*Id.*)

In addition, pursuant to the *Stipulation By Christopher Sabin Nassif and 2005 Residential Trust 3-1 By Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust As Trustee* [doc. 144] and corresponding order [doc. 146], the debtor proposes to pay \$1,000 per month to class 4 general unsecured creditors. This \$1,000 monthly payment is greater than the \$150 monthly payment stated in the cash flow projections. Thus, the debtor's monthly expenses are \$850 more than stated in his projections.

Because of these discrepancies, it does not appear that the debtor will have sufficient income to fund the Plan.

***Bank of New York Mellon's Objection***

Class 1 of the Plan consists of the impaired secured claim of Bank of New York Mellon/Nationstar ("BNYM"), the first priority lienholder against the debtor's residence. According to its filed proof of claim, BNYM holds a secured claim in the amount of \$3,251,939.39, including prepetition arrears of \$631,191. In his July 2018 monthly operating report, the debtor indicates that he has not made 13 postpetition payments to BNYM.

In the Plan, the debtor states his intent to file an adversary proceeding against BNYM, on the grounds that the debtor's loan modification never posted to his account upon its transfer from Bank of America to Nationstar. Under the Plan, the debtor will make contractual monthly mortgage payments of \$10,686, plus \$7,515 per month for 84 months to cure the prepetition arrearages.

On April 13, 2018, BNYM filed an objection to the Plan [doc. 133]. BNYM objects on the following grounds:

- The Plan improperly seeks to modify the right of a claim secured only by the debtor's principal residence, in violation of 11 U.S.C. § 1123(b)(5);
- If the debtor seeks to cure a default under § 1124, the cure must be completed by the Effective Date of the Plan;
- The debtor's calculation of contractual arrears does not address any post-petition arrears;
- The cure term of 84 months amounts to a de facto modification of BNYM's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Christopher Sabin Nassif**

**Chapter 11**

claim, and is neither fair nor equitable; and

- BNYM's treatment is unfair discrimination in violation of § 1123(a)(4).

The Court will overrule BNYM's objection as to § 1123(a)(4). Section 1123(a)(4) provides that a plan shall "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest[.]. BNYM holds the only claim in class 1. As such, the Plan does not discriminate against BNYM's claim in favor of other class 1 claims.

The Court will overrule BNYM's objection as to § 1123(b)(5). Pursuant to 11 U.S.C. § 1123(b)(5), a chapter 11 plan may "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[.]" BNYM argues that the debtor's treatment of its claim violates § 1123(b)(5). However, "cure" and "modification" are not the same. *See In re Lennington*, 288 B.R. 802, 805 (Bankr. C.D. Ill. 2003). Here, the debtor is not proposing to modify the terms of BNYM's mortgage. The debtor proposes to pay postpetition, contractual monthly payments pursuant to the terms of the mortgage. In addition, the debtor proposes to "cure" any arrearages by paying an additional monthly amount to BNYM over an 84-month term. As the *Lennington* court held, "individual Chapter 11 debtors are permitted to cure a prepetition residential mortgage arrearage in installment payments, through the Chapter 11 plan, while remaining current on their postpetition payments." *Lennington*, 288 B.R. at 806. As for the 84-month cure term, BNYM has not provided any authority holding that such a cure term is *per se* unreasonable.

The Court will sustain BNYM's objection as to the amount of postpetition arrearages owed. BNYM is correct that the debtor has not addressed any postpetition arrearages in the Plan.

Pursuant to 11 U.S.C. § 1124, a class is impaired under a plan unless the plan:

- (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or
- (2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Christopher Sabin Nassif**

**Chapter 11**

accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

"[A]ny alteration of a creditor's rights, no matter how minor, constitutes 'impairment.'" *In re Windsor on the River Assocs., Ltd.*, 7 F.3d 127, 130 (8th Cir. 1993). Enhancing a creditor's rights constitutes "impairment." *In re L & J Anaheim Assocs.*, 995 F.2d 940, 943 (9th Cir. 1993). Under § 1124(2), an individual debtor may reinstate a residential mortgage and "cure" a prepetition arrearage in installment payments under a reorganization plan. "Where a Chapter 11 plan provides for the cure of a default, reinstatement of the original terms of the loan, compensation for damages, and does not otherwise alter the rights of the mortgagee, the claim of the mortgagee is unimpaired[.]" *Lennington*, 288 B.R. at 804. Such cure amount is determined by nonbankruptcy law. 11 U.S.C. § 1123(d).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, August 16, 2018

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif

Chapter 11

BNYM argues that any cure under § 1124 must be completed by the effective date of a chapter 11 plan. BNYM is partially correct. The cases cited by BNYM hold that a cure under § 1124 must be completed by the effective date of the plan if the class is to be deemed "unimpaired" under the plan. In *In re Tri-Growth Ctr. City, Ltd.*, 136 B.R. 848, 852 (Bankr. S.D. Cal. 1992), the court held "that the cure required by § 1124 must be completed by the effective date of the plan if the default rate of interest is annulled." In other words, if the full cure amount is not paid on the effective date, the claim remains impaired and is entitled to be paid any default rate of interest under the terms of the loan. In *In re Schatz*, 426 B.R. 24, 28 (Bankr. D.N.H. 2009), the court held that a debtor could "'cure' and 'reinstate' [a creditor's] loans under § 1123(d) over the life of the plan, but [creditor] is entitled to the default interest rate on its claim for the prepetition arrearage and is entitled to prepetition attorneys' fees, expenses, and costs related to the loans." The court in *In re Jones*, 32 B.R. 951, 960 (Bankr. D. Utah 1983), held that "[c]ure and compensation required by Section 1124(2) must be completed by the effective date of the plan if impairment is to be avoided."

Here, the Plan does not seek to treat BNYM's claim as unimpaired. In fact, the Plan explicitly states that class 1 is impaired and that it voted against the Plan. Accordingly, under the terms of the Plan, it does not appear that the arrearages must be paid in full on the effective date of the Plan. However, pursuant to the authority cited by BNYM, it appears that the debtor's treatment of the class 1 prepetition arrearages does not sufficiently account for any default interest rate, prepetition attorneys' fees, expenses, or costs related to BNYM's loan.

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip); 7/19/18(stip)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13142 Amir Elosseini**

**Chapter 11**

**#6.00** Status conference re: chapter 11 case

fr. 2/8/18;

Docket 1

**Tentative Ruling:**

Having reviewed the *Case Status Conference Report* [doc. 57] filed by the debtor, the Court will continue this status conference to **November 15, 2018 at 1:00 p.m.** The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on August 16, 2018 are excused.

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

**Debtor(s):**

Amir Elosseini

Represented By  
Kevin Tang



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#7.00** Status conference re: chapter 11 case

fr. 5/3/18

Docket 1

**Tentative Ruling:**

Contrary to the *Order Setting Hearing On Status Of Chapter 11 Case And Requiring Report On Status Of Chapter 11 Case* [doc. 10], the debtor has not filed his 2017 federal tax return with the Court. If the debtor has filed his 2017 federal tax return with the taxing authorities, this tax return also must be filed with the Court.

The Court will continue this status conference to be held in connection with the hearing on the debtor's proposed disclosure statement, i.e., on **September 20, 2018 at 1:00 p.m.**

Appearances on August 16, 2018 are excused.

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11729 Richard Philip Dages**

**Chapter 11**

**#7.10** Status conference re Chapter 11 case

Docket 0

**Tentative Ruling:**

When does the debtor anticipate filing his 2017 tax returns?

The parties should address the following:

Deadline to file proof of claim (“Bar Date”): **October 31, 2018.**

Deadline to mail notice of Bar Date: **August 31, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **December 14, 2018.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 10, 2019.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor’s(s’) 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Richard Philip Dages**

**Chapter 11**

**Debtor(s):**

Richard Philip Dages

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#8.00** Unsecured creditor, John Kochakja's motion to allow late-filed claim

Docket 335

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On April 28, 2017, Capri Coast Capital, Inc. ("Capri") filed a voluntary chapter 11 petition. On August 2, 2017, the Court entered an order granting the Debtor's motion for joint administration of its case with the cases of Ravello Ventures, Inc., Amalfi Assets, Inc., and Hampton Heights, Inc. (collectively, the "Debtors") [doc. 43]. John Kochakji ("Creditor") was not listed as a creditor in the schedules filed in each of the Debtors' cases.

On September 21, 2017, the Court entered an order setting the bar date for filing proofs of claim in the Debtors' cases (the "Bar Date Order") [doc. 108]. The Bar Date Order set December 1, 2017 as the deadline for filing proofs of claim.

On October 2, 2017, the Debtors filed and served the *Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case [LBR 3003-1]* (the "Bar Date Notice") [doc. 118]. The attached proof of service does not indicate that Creditor was served with the Bar Date Notice.

On February 23, 2018, Creditor filed an action in state court against Capri and other defendants, asserting causes of action including breach of contract, failure to pay wages, retaliation, and wrongful termination (the "State Court Action"). (Doc. 335, Exh. 1.) Before filing the State Court Action, on November 30, 2016, Creditor had filed a claim with the California Labor Commission. (Doc. 335, Exh. 3, at p. 4.) On November 22, 2017, Creditor's state court counsel had sent a letter to Capri, Optimum Employer Solutions, LLC ("Optimum"), Erika Rice (the Debtors' principal), and Mary Guidry regarding recovery of civil penalties for violations of the California Labor Code. (Doc. 335, Exh. 3, at p. 9.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

On February 28, 2018, the Debtors filed a motion to approve the sale of substantially all of the Debtors' assets (the "Sale Motion") [doc. 221]. On April 5, 2018, the court entered an order granting the Sale Motion [doc. 257].

On July 14, 2018, Creditor filed a *Motion to Allow Late-Filed Claim* (the "Claim Allowance Motion") [doc. 335]. Creditor states that he was not listed as a creditor in the Debtors' schedules and never received the Bar Date Notice. Creditor filed the State Court Action without knowledge of the Debtors' bankruptcy filings. Creditor did not learn of the Debtors' bankruptcy filings until June 2018. Creditor argues that because he did not have notice of the bankruptcy filings or the claims bar date, due process requires that the Court allow Creditor's late-filed claim.

On July 31, 2018, the Debtors filed an opposition to the Claim Allowance Motion [doc. 351].

**II. DISCUSSION**

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 3003(b)(1):

The schedule of liabilities filed pursuant to §521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

FRBP 3003(c)(2) provides:

Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

FRBP 3003(c)(3) provides that "[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6)." Creditors are entitled to at least 21 days' written notice of the deadline for filing proofs of claim. Fed. R. Bankr. P. 2002(a)(7).

Pursuant to FRBP 9006(b)(1):

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.

In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 389 (1993), the Supreme Court noted:

The "excusable neglect" standard of Rule 9006(b)(1) governs late filings of proofs of claim in Chapter 11 cases but not in Chapter 7 cases. The rules' differentiation between Chapter 7 and Chapter 11 filings corresponds with the differing policies of the two chapters. Whereas the aim of a Chapter 7 liquidation is the prompt closure and distribution of the debtor's estate, Chapter 11 provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors. . . . In overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization.

*Id.* at 389 (citations omitted). Whether neglect is excusable is an equitable determination, and considers the following factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its impact on judicial proceedings; (3) reasons for the delay, including whether the delay was within movant's reasonable control;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

and (4) whether the movant acted in good faith. *See id.* at 385.

***A. Prejudice to the Debtors***

Granting the Claim Allowance Motion will prejudice Debtors, who have sold substantially all their assets and are no longer a going concern. As a result, the Debtors have limited resources to defend against Creditor's claim. This factor favors denying the Claim Allowance Motion.

***B. Length of Delay and Its Impact on Judicial Proceedings***

On November 30, 2016, Creditor filed his claim with the California Labor Commission. On April 27, 2017, Capri filed its chapter 11 petition. On October 2, 2017, the Debtors served the Bar Date Notice, which indicated a claims bar date of December 1, 2017.

On November 22, 2017, Creditor's state court counsel mailed a letter to Capri, Optimum, Ms. Rice, and Ms. Guidry regarding recovery of civil penalties for violations of the California Labor Code. On February 23, 2018, Creditor filed the State Court Action. On July 14, 2018, Creditor filed the Claim Allowance Motion, asserting that he learned about the Debtors' bankruptcy in June 2018.

Debtors note that 20 months have elapsed since Creditor initially filed his claim with the California Labor Commission. However, Creditor appears to have acted promptly upon learning of the Debtors' bankruptcy cases. Creditor learned about the cases in June 2018, and filed the Claim Allowance Motion on July 14, 2018. In any event, the Debtors have not argued that the Creditor's delay—20 months or otherwise—has had a negative impact on judicial proceedings before this Court. As such, this factor favors granting the Claim Allowance Motion.

***C. Reason for the Delay/Delay in Reasonable Control of the Movant***

"Insufficient notice of the bar date may be sufficient cause to extend the bar date. . . . Due process and the Bankruptcy Rules entitle the creditor to adequate and reasonable notice of bar dates." *In re First Magnus Fin. Corp.*, 415 B.R. 416, 422 (Bankr. D. Ariz. 2009) (citations omitted).

The debtor lists the creditors, so it is the debtor's knowledge of a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, August 16, 2018

Hearing Room 301

2:00 PM

CONT...

**Capri Coast Capital, Inc.**

**Chapter 11**

creditor, not the creditor's knowledge of his claim, which controls whether the debtor has a duty to list that creditor. . . . The bankruptcy court must give formal notice of the first meeting of creditors to all creditors. Fed.R.Bankr.P. 3002. The notice must also advise of the method and deadline for filing a proof of claim. Fed.R.Bankr.P. 2002.

*Levin v. Maya Const. (In re Maya Const. Co.)*, 78 F.3d 1395, 1398–99 (9th Cir. 1996). In *Maya*, the debtor did not list a certain creditor or give him any of the requisite formal notices. The Ninth Circuit Court of Appeals noted that "[t]his is significant because if a contingent creditor such as [the omitted creditor] fails to file a proof of claim within the prescribed time limit, his claims are discharged by confirmation of a reorganization plan." *Id.* at 1399.

In addition,

A debtor must list a creditor whose identity and claim he knows. . . . The burden is on the debtor to cause formal notice to be given; the creditor who is not given notice, even if he has actual knowledge of reorganization proceedings, does not have a duty to investigate and inject himself into the proceedings."

*Id.* (citation omitted).

Creditor states that he never received notice of the Debtors' bankruptcy filings. Creditor was not scheduled as a creditor in the Debtors' cases, and Creditor was not served with the Bar Date Notice. The Debtors do not dispute that Creditor never received notice of the bankruptcy filings. It appears that the reason for Creditor's delay was not in his control, because he was never served with notice of the bankruptcy filings or the claims bar date. As a result, Creditor has not been afforded due process as to Debtors' bankruptcy cases. This factor favors granting the Claim Allowance Motion.

**D. Whether Movant Acted in Good Faith**

In their opposition, Debtors state, "It is difficult to imagine a *good faith* reason for a year and a half delay in taking any action in the Debtors' bankruptcy cases." (Doc. 351, at p. 3 (emphasis in original).) Here, one need not "imagine" a good faith reason,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 16, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

because a good faith reason exists—as noted above, Creditor was never served with any bankruptcy notices, including the Bar Date Notice. Absent any evidence to the contrary, it appears that Creditor has acted in good faith, and took action soon after he learned of the bankruptcy filings. This factor favors granting the Claim Avoidance Motion.

**III. CONCLUSION**

In light of the foregoing, the Court will grant the Claim Allowance Motion.

Creditor must submit the order within seven (7) days.

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Friday, August 17, 2018

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#1.00 Order to show cause (1) requiring William Hill, aka Bill Hill, to personally appear and explain his connection to this case; (2) Why William Hill, aka Bill Hill, should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110; (3) Requiring Burce Rorty to personally appear and explain by whome he was hired to appear in this case and what fees, if any, he received; and (4) Requiring Carmit Benbaruh to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18; 7/5/18

Docket 1

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, August 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#2.00** Motion for reconsideration to vacate order disgorging compensation

fr. 4/5/18; 5/15/18; 6/8/18; 7/5/18

Docket 66

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

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, August 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#3.00** Order that William Hill, aka Bill Hill, personally appear and show cause, if any, as to why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110

fr. 5/15/18; 6/8/18; 7/5/18;

Docket 45

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

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, August 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12131 Virgillo Armando Cerna Choto**

**Chapter 7**

**#4.00** Status conference re: Leslie Richards' motion for reconsideration  
to vacate order for sanctions/disgorgement

fr.4/5/18; 5/15/18; 6/8/18; 7/5/18

Docket 30

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Friday, August 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-13183 Mary F Kimbell**

**Chapter 13**

- #5.00** Order to show cause  
(1) Requiring William Hill, aka Bill Hill, to personally appear and explain his connection to the case  
(2) Requiring William Hill, aka Bill Hill to explain why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. § 1101  
(3) Requiring Mary F. Kimbell to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18; 7/5/18

Docket 23

**Party Information**

**Debtor(s):**

Mary F Kimbell

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 21, 2018**

**Hearing Room 301**

---

8:30 AM

**1:18-11257 Adriana Michele Mora-Martinez**

**Chapter 7**

**#2.00** Reaffirmation agreement between debtor and  
Logix Federal Credit Union

Docket 8

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

**Debtor(s):**

Adriana Michele Mora-Martinez Pro Se

**Trustee(s):**

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 21, 2018**

**Hearing Room 301**

8:30 AM

**1:18-11493 Laura Gonzalez**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and  
Daimler Trust

Docket 11

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

**Debtor(s):**

Laura Gonzalez

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11432 Anusha Gerard Silva**

**Chapter 7**

**#1.00 Motion for relief from stay [RP]**

BANK OF AMERICA, N.A.  
VS  
DEBTOR

fr. 8/1/18

Docket 8

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Anusha Gerard Silva

Represented By  
Henrik Mosesi

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Anusha Gerard Silva**

**Chapter 7**

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

1:18-10244 Donald Critchfield and Sharyn Critchfield

Chapter 13

#2.00 Motion for relief from stay [PP]  
(2015 Ford Flex)

CAB WEST, LLC  
VS  
DEBTOR

from: 8/1/18(stip)  
**STIP filed 8/21/18**

Docket 34

\*\*\* VACATED \*\*\* REASON: Order entered approving stip/apo on 8/21/18

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#3.00** Motion for relief from stay [PP]  
(2017 Ford Flex)

CAB WEST, LLC  
VS  
DEBTOR

from: 8/1/18(stip)

Docket 35

**\*\*\* VACATED \*\*\* REASON: Order entered approving stip/apo on  
8/21/18.**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11611 Alexander Cruz**

**Chapter 7**

**#4.00** Motion for relief from stay [PP]

AMERICREDIT FINANCIAL SERVICES, INC.  
VS  
DEBTOR

Docket 14

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Alexander Cruz

Represented By  
Daniel F Jimenez

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11495 Steven Nia**

**Chapter 7**

**#5.00** Motion for new trial and for reconsideration of order granting motion for relief from automatic stay [RP]

Docket 161

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

**A. *The Calabasas Property***

On February 1, 2011, Stanley and Carolyn Ching (the "Chings"), Steven Nia (the "Debtor"), and Chongyi Liu executed an All-Inclusive Deed of Trust with Assignment of Rents (the "Deed of Trust") as to the real property located at 24485 Park Granada, Calabasas, CA 91302 (the "Calabasas Property"). The Chings are the beneficiaries under the Deed of Trust. The Debtor and Ms. Liu are the trustors under the Deed of Trust. (Real Property Declaration, doc. 139, Exh. A.).

On December 31, 2015, a deed transferring the Calabasas Property from the Debtor and Ms. Liu to Illusion Ventures, LLC was recorded in the Los Angeles County Recorder's Office [document no. 20151652832]. (Declaration of Alan Nahmias ("Nahmias Decl."), doc. 139, Exh. 5.)

**B. *The Illusion Ventures, LLC Case***

On April 10, 2017, Illusion Ventures, LLC filed a voluntary chapter 7 petition, commencing case no. 1:17-10926-VK. On April 25, 2017, the Chings filed a motion for relief from stay in the Illusion Ventures, LLC case (the "Illusion Ventures RFS Motion") [1:17-10926-VK, doc. 10]. The Chings argued that relief from stay was warranted (i) under 11 U.S.C. § 362(d)(1) on the grounds of bad faith; and (ii) under 11 U.S.C. § 362(d)(2) because there is no equity in the Calabasas Property and it is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

not necessary for an effective reorganization. In the Illusion Ventures RFS Motion, Movant alleged that the following additional judgment and tax liens encumber the Calabasas Property, in the total amount of \$461,555.79:

<u>Creditor</u>	<u>Amount</u>	<u>Recordation No.</u>
Maxim Integrated Products, Inc. ("Maxim")	\$182,073.62	20111427327
Buchalter Nemer, APC ("Buchalter")	\$134,193.85	20131678228
Internal Revenue Service ("IRS")	\$95,408.11	20140481862
Franchise Tax Board ("FTB")	\$35,260.21	20140769464
FTB	\$14,620.00	20160116785

(Illusion Ventures RFS Motion, at p. 9.)

On May 24, 2017, the Court held a hearing on and granted the Illusion Ventures RFS Motion. The Court posted its ruling to the Illusion Ventures, LLC case docket [1:17-10926-VK, doc. 24]. On May 31, 2017, the Court entered an order granting the Illusion Ventures RFS Motion [1:17-10926-VK, doc. 26]. A trustee's sale was scheduled for June 5, 2017.

***C. The Debtor's Pending Case***

On June 4, 2017, the Debtor filed the pending bankruptcy case. The Chings' counsel contacted the Debtor's counsel and stated his belief that the automatic stay did not apply to the Calabasas Property because the Debtor was not on title. (Declaration of Alan Nahmias, doc. 17, ¶ 3.) The Debtor's counsel contended that the automatic stay applied because the Debtor's name was on the loan documents and he held an equitable interest in the Calabasas Property. (*Id.*) The Chings found authority supporting their position. Accordingly, on June 7, 2017, the Chings proceeded with the trustee's sale. (Real Property Decl., doc. 139, Exh D.)

On June 14, 2017, the Debtor filed his schedules [doc. 10]. On his petition, the Debtor listed his residence as 17977 Medley Drive, Encino, CA 91316-4377 (the "Encino Property") and his mailing address as "23679 Calabasas Road #1020, Calabasas, CA 91302." (Doc. 1, at p. 2.)

In his Schedule A/B, the Debtor listed the Calabasas Property [erroneously identified as "24458 Park Granada"], indicating that he had an "equitable interest" in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

CONT...

Steven Nia

Chapter 7

Calabasas Property and that the Calabasas Property has a current value of \$2,100,000. (Doc. 10, at p. 5.) The Debtor also claimed an exemption in the Calabasas Property in the amount of \$10,000 under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5). (*Id.*, at p. 10.) According to the Debtor, encumbering the Calabasas Property are the following secured claims, in the total amount of \$1,892,000.00:

<u>Creditor</u>	<u>Amount</u>
The Chings	\$100,000
Union Bank (1 <sup>st</sup> deed of trust)	\$1,592,000.00
Union Bank (2 <sup>nd</sup> deed of trust)	\$200,000.00

(*Id.*, at pp. 15-16.) The Debtor also lists the following secured claims purportedly encumbering only the Encino Property:

<u>Creditor</u>	<u>Amount</u>
Maxim	\$182,073.00
Buchalter	\$134,193.00
IRS	\$95,408.00
FTB	\$35,260.00
FTB	\$14,620.00

***D. The First RFS Motion***

On June 21, 2017, the Chings filed their first motion for relief from the automatic stay as to the Calabasas Property in this case (the "First RFS Motion") [doc. 17]. In the First RFS Motion, the Chings sought annulment of any automatic stay that was in effect at the time of the foreclosure sale, and relief from the current automatic stay to proceed with the eviction of the Debtor and any other occupants from the Calabasas Property. The Chings also requested *in rem* relief. On July 28, 2017, the Court entered an order denying the First RFS Motion, in light of the concurrent conversion of the Debtor's case to chapter 7 [doc. 62].

***E. Conversion, Dismissal and Reinstatement, Amended Schedules, and Relief from Stay as to the Encino Property***

On July 24, 2017, the Court entered an order converting the Debtor's case to chapter 7



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

(the "Conversion Order") [doc. 56]. The Conversion Order stated that the Debtor must comply with Federal Rule of Bankruptcy Procedure ("FRBP") 1019.

On October 12, 2017, following the conversion of this case to chapter 7, this case was dismissed after the Debtor failed to file required documents [doc. 69]. On October 12, 2017, on the heels of that dismissal, the Debtor filed another chapter 11 case, case no. 1:17-bk-12749-VK (the "Second Chapter 11 Case").

On October 26, 2017, the United States Trustee filed a motion to vacate the dismissal of this case [doc. 73]. The Debtor opposed that motion [doc. 76]. On November 14, 2017, the Court entered an order vacating the dismissal and reinstating this case [doc. 81].

On January 3, 2018, the Debtor attended his 341(a) meeting in this case. The Debtor testified that he did not reside at the Calabasas Property when he filed this case. (Doc. 139, Exh. 1, at p. 75.)

On February 7, 2018, David Gottlieb, chapter 7 trustee (the "Trustee") filed a *Motion for Order: (A) Authorizing Sale of Assets of the Debtor's Bankruptcy Estate Free and Clear of Liens, Claims and Encumbrances; (B) Approving Overbid Procedure; and (C) Approving Compromise of Controversy* (the "Sale Motion") [doc. 100]. Through the Sale Motion, the Trustee sought to sell to the Chings: (i) the estate's interest in the Calabasas Property; (ii) the estate's interest in the Debtor's improper foreclosure claim against the Chings; (iii) the estate's interest in the Debtor's motion for order to show cause re: contempt filed against the the Chings on July 5, 2017; and (iv) the estate's interest in the litigation commenced by the Debtor's company against the Chings (collectively, the "Assets").

At the hearing on the Sale Motion on March 8, 2018, the Debtor was the successful overbidder, in the amount of \$60,000. On March 26, 2018, the Court entered an order granting the Sale Motion and approving the sale of the Assets to the Debtor [doc. 132].

On February 12, 2018, U.S. Bank, N.A. ("U.S. Bank") filed a motion for relief from the automatic stay as to the Encino Property [doc. 106]. On March 19, 2018, the Court entered an order granting U.S. Bank's motion [doc. 128]. On May 7, 2018,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

U.S. Bank foreclosed on the Encino Property. (Nahmias Decl., doc. 139, ¶ 21.)

On March 2, 2018, the Debtor filed an amended petition and schedules [doc. 113]. In the amended petition, the Debtor listed his residence address as the Calabasas Property. The Debtor also listed the value of the Calabasas Property as \$2.1 million and again asserted an equitable interest in the Calabasas Property. (Doc. 113, at p. 12.) The Debtor asserted a homestead exemption in the Calabasas Property in the amount of \$100,000, pursuant to California Code of Civil Procedure § 704.730. (*Id.*, at p. 18.)

***F. The Second RFS Motion***

The Chings subsequently negotiated with the Debtor to resolve their various disputes, but they were unsuccessful. (Nahmias Decl., doc. 139, ¶ 18.) On May 30, 2018, the Chings filed a second motion for relief from the automatic stay as to the Calabasas Property (the "Second RFS Motion") [doc. 139] and a request for judicial notice [doc. 142]. The Chings also submitted an appraisal dated May 19, 2018, valuing the Calabasas Property at \$1,750,000. (Doc. 139, Exh. E, at pp. 43–63.) The Chings sought substantially the same relief sought in the First RFS Motion. The Chings alleged that the monthly deed of trust payment on the Calabasas Property is \$8,019; the Debtor had not made 24 payments and had incurred arrearages in the total amount of \$192,456. (Real Property Declaration, at p. 8.) In addition, the Chings alleged that they had advanced \$76,000 for unpaid property taxes as to the Calabasas Property. (*Id.*, at p. 7.) The Chings further alleged that the Debtor's family has been residing at the Calabasas Property during this time. (Real Property Declaration, at p. 12.)

On June 7, 2018, the Debtor filed an untimely opposition [doc. 147]. The opposition was not supported by declaration or any other admissible evidence. The opposition stated:

1. The Movants allege a plethora of claims, dredging up every claim possible whether relevant or otherwise. The Court's task on this Motion is simple—whether cause exists to lift the stay.
2. The Court should not grant the Motion in that the Movants are adequately protected by not only equity but by the Debtor's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

family's maintenance and insuring of the property.

3. The Court should not be influenced by the many allegations of bad faith especially when unaccompanied by competent evidence. Innuendo is not a substitute for evidence. The hearing on the motion is a summary proceeding which requires limited findings.
4. The parties will continue this litigation either in the Order to Show Cause or in state court litigation. This Court should not make findings which may impair elsewhere the Debtor's legal rights.
5. If the Court is inclined to grant the Motion, the Court should limit its basis to the issue of adequate protection.

(Doc. 147, at pp. 1–2.)

On June 20, 2018, the Court held a hearing on Second RFS Motion. The Debtor's counsel appeared by telephone and requested that any relief granted be narrow based lack of equity. Counsel also reminded the Court that he had filed a motion to withdraw as counsel. Counsel read a statement by the Debtor into the record, as follows:

- The Debtor requests a continuance of the hearing;
- The Debtor intends to retain new counsel;
- The Debtor believes that another attorney would file an opposition with better arguments;
- If the motion is granted, the Court should not affect the Debtor's rights in his bankruptcy case and on appeal; and
- The Second RFS Motion should be "combined" with the Debtor's order to show cause, seeking to hold Movants liable for violating the automatic stay; a continuance of the hearing on the Second RFS Motion would preserve his rights.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

The Court granted the Second RFS Motion and posted its ruling to case docket (the "RFS Ruling") [doc. 155]. On June 28, 2018, the Court entered an order granting the Second RFS Motion (the "RFS Order") [doc. 158]. The RFS Ruling provided, in relevant part:

Movants have met their burden of proof as regards the Debtor's equity in the Calabasas Property. Movants have provided evidence that the Debtor transferred the Calabasas Property to Illusion Ventures, LLC on December 31, 2015. (Nahmias Decl., Exh. 5.) Because of this transfer, the Debtor does not have any equity in the Calabasas Property. Even if the transfer had not occurred, Movants have established that the Calabasas Property is overencumbered.

The Debtor has not met his burden of proof as to his alleged equitable interest in the Calabasas Property. In opposing the First RFS Motion and the Second RFS Motion, the Debtor has not provided evidence supporting this equitable interest, such as evidence of deed of trust payments on the Calabasas Property.

...

A review of the *Fjeldsted* factors shows that annulment of the automatic stay is warranted. The Illusion Ventures, LLC case was a prior, related case also affecting the Calabasas Property. In the prior case, the Court granted relief from the automatic stay to [] Movants, in part on the grounds that the Illusion Ventures, LLC case had been filed in bad faith. Here, the circumstances also indicate an intention to delay and hinder creditors. The Debtor has not made deed of trust payments or paid property taxes on the Calabasas Property for several years. In addition, the Debtor's failure to comply with his statutory obligations led to the dismissal of this chapter 7 case, prior to its reinstatement. Under the totality of the circumstances, it appears that the Debtor has not acted in good faith.

...

Here, the Trustee sold the estate's interest in the Calabasas Property to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Steven Nia**

**Chapter 7**

the Debtor. Accordingly, the Calabasas Property is no longer property of the estate. To the extent that the automatic stay might still apply to the Calabasas Property, cause exists to lift the automatic stay pursuant to § 362(d)(1). Movants' interest in the Calabasas Property is not adequately protected. As to the Calabasas Property, the Debtor has not made monthly deed of trust payments or paid property taxes for two years.

...

On March 26, 2018, the Court entered an order granting the Sale Motion, approving the sale of the estate's interest in the Calabasas Property to the Debtor, along with other assets, for the amount of \$60,000 [doc. 132]. Thus, the Calabasas Property is presently not property of the estate. Consequently, it appears that Movants' request for relief under § 362(d)(2) is moot.

...

Multiple bankruptcy filings have affected the Calabasas Property. The Calabasas Property was an asset in the Illusion Ventures, LLC bankruptcy case, and the Debtor contends that it is subject to the automatic stay in this case as well.

Despite transferring the Calabasas Property to Illusion Ventures, LLC, the Debtor contends that he held an equitable interest in the Calabasas Property as of the petition date, and that Movants' foreclosure sale violated the automatic stay. However, the Debtor has yet to produce evidence of this equitable interest. Moreover, with respect to the Calabasas Property, the Debtor has not made deed of trust payments or paid property taxes for several years. Under the totality of the circumstances, the Debtor's case appears to be part of a scheme to delay, hinder, or defraud Movants that involved multiple bankruptcy filings affecting the Calabasas Property.

(Doc. 155, at pp. 6, 8–11.)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

CONT... Steven Nia

**Chapter 7**

**G. *The Motion to Withdraw***

On June 13, 2018, the Debtor's counsel filed a *Motion to Withdraw as Counsel for Debtor* (the "Motion to Withdraw") [doc. 149]. On July 6, 2018, the Debtor's counsel filed a notice of withdrawal of the Motion to Withdraw [doc. 160].

**H. *The Motion to Reconsider***

On July 12, 2018, the Debtor filed a *Motion for New Trial and for Reconsideration of Order Granting Motion for Relief from Automatic Stay (Real Property)* (the "Motion to Reconsider") [doc. 161]. On August 8, 2018, the Chings filed a timely opposition [doc. 173]. On August 15, 2018, the Debtor filed a timely reply [doc. 179].

**II. DISCUSSION**

**A. *Request for Judicial Notice***

As an initial matter, pursuant to Federal Rule of Evidence 201(b)(2), the Court will grant the Chings' unopposed request for judicial notice of documents attached to the Request for Judicial Notice [doc. 177]. The judicially noticeable documents are copies of court records. *See, e.g., Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014) ("It is well established that we may take judicial notice of judicial proceedings in other courts."); *Golden Gate v. Marincovich*, 286 F. 105, 106 (9th Cir. 1923) ("Every court takes judicial notice of its own records in the same case.").

**B. *Rule 59***

A motion for reconsideration filed within fourteen days of the entry of judgment is treated as a motion to alter or amend judgment under FRBP 9023, incorporating Federal Rule of Civil Procedure ("Rule") 59(e). *Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001). Rule 59(e) allows for reconsideration if the court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. There may also be other, highly unusual circumstances warranting reconsideration." *Sch. Dist. No. 1J, Multnomah Cnty., Or.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

CONT...

Steven Nia

Chapter 7

*v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (internal citation omitted).

When supplementing a Rule 59(e) motion with additional evidence, "the movant must show either that the evidence is newly discovered[, or] if the evidence was available at the time of the decision being challenged, that counsel made a diligent yet unsuccessful effort to discover the evidence." *Devon Energy Prod. Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195, 1213 (10th Cir. 2012) (citation and quotation omitted). A court's commission of manifest error of law or fact justifies the grant of a Rule 59(e) motion. *See Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). "The court should not grant a Rule 59(e) if the movant only wants to present new arguments or supporting facts that could have been offered initially." *In re Sun Healthcare Grp., Inc.*, 214 F.R.D. 671, 674 (D.N.M. 2003).

Here, the Debtor filed his Motion to Reconsider within fourteen days after the entry of the RFS Order. Accordingly, the Court will treat the Motion to Reconsider as a motion to alter or amend judgment under FRBP 9023 and Rule 59(e).

**C. Failure to Raise Arguments/Evidence in Opposition to the Second RFS Motion**

Pursuant to Local Bankruptcy Rule ("LBR") 9013(f)(2), "[a] Response must be a complete written statement of all reasons in opposition thereto or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities."

Pursuant to LBR 9013-1(f)(3):

In a Response to a motion filed in a contested matter pursuant to FRBP 9014, the responding party must raise in that Response any objection or challenge to the bankruptcy court's authority to enter a final order on the underlying motion. The responding party must cite relevant authority and provide evidence in support of its position. The failure of the responding party to raise its objection or challenge in a Response will be deemed consent to the bankruptcy court's authority to enter a final order on the underlying motion.

In opposition to the Second RFS Motion, the Debtor filed a two-page pleading. This

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

pleading did not cite any authority and did not attach a declaration or any other evidence in opposition to the Second RFS Motion. Accordingly, because the Debtor did not properly raise his objection or challenge in his opposition, such failure was deemed consent to the Court's authority to enter a final order on the Second RFS Motion, pursuant to LBR 9013-1(f)(3).

At the hearing on the Second RFS Motion, counsel for the Debtor requested a continuance, in part because counsel had filed the Motion to Withdraw and the Debtor sought additional time to obtain new counsel. However, after the hearing, counsel withdrew the Motion to Withdraw on July 6, 2018. On July 12, 2018, the Motion to Reconsider followed.

In support of the Motion to Reconsider, the Debtor's counsel attests that he was out of state on business travel during much of the seven-day period to oppose the RFS Motion, and the opposition was due when counsel was preparing witnesses for and conducting a trial. The Debtor attests that he was traveling overseas when his opposition to the Second RFS Motion was due. Such travel made it difficult to communicate with his counsel during this time. Because of these communication difficulties, the Debtor could not file a timely opposition.

However, at the hearing on the Second RFS Motion, neither the Debtor nor his counsel stated that travel or other obligations prevented the timely filing of an adequate opposition. Instead, the Debtor acknowledged that the Motion to Withdraw was pending and informed the Court that he would be seeking new counsel.

As noted above, a Rule 59(e) motion should not be granted if the movant seeks only to present new arguments or supporting facts that could have been offered initially. *Sun Healthcare*, 214 F.R.D. at 674. Nearly all of the arguments and facts addressed in the Motion to Reconsider could have been—and should have been—initially offered in opposition to the Second RFS Motion. In effect, the Debtor is using the Motion to Reconsider to remedy his prior failure to file an adequate opposition to the Second RFS Motion. As such, the Motion to Reconsider is not appropriate under Rule 59(e).

***D. Alleged Errors in Granting Relief Under §§ 362(d)(1) and (d)(2)***

Even assuming that the Motion to Reconsider were procedurally proper, for the reasons below, the Debtor's alleged errors of fact and law do not warrant



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

reconsideration of the RFS Order. In the Motion to Reconsider, the Debtor argues that the Court made errors of fact in granting relief under §§ 362(d)(1) and (d)(2).

1. ***The Debtor's Equitable Interest in the Calabasas Property***

In the RFS Ruling, the Court determined that the Debtor did not have equity in the Calabasas Property because, prepetition, he had transferred his interest in the Calabasas Property to Illusion Ventures prepetition. The Court also acknowledged the Debtor's assertion that he held an equitable interest in the Calabasas Property. Contrary to the Court's determination, the Debtor argues that the holder of an equitable interest in real property can enjoy equity in that real property. According to the Debtor, the Court erred because it did not apply a test to determine whether the Debtor had such an equitable interest.

In *In re Cocke*, 371 B.R. 554 (Bankr. M.D. Fla. 2007), the debtors listed an interest in real property that was held in a revocable trust. The debtors were listed in the trust documents as beneficiaries of the trust, along with other individuals. The bankruptcy court sustained the chapter 7 trustee's objection to the debtors' homestead exemption in the real property, on the grounds that based on the express language of the trust, the debtors did not own any beneficial or equitable interest in the real property. The district court reversed and remanded, instructing the bankruptcy court to determine (i) whether the debtors had a legal or equitable interest which gave them the legal right to use and possess the real property as a residence; (ii) whether the debtors had the intention of making the real property their homestead; and (iii) whether the Debtors actually maintain the real property as their principal residence.. On remand, the bankruptcy court determined that because the trust was revocable, the debtors had a sufficient equitable interest in the real property to claim a homestead exemption.

*Cocke* is distinguishable from the pending case. In *Cocke*, the "test" to whether an equitable interest exists was tailored to the facts of that case. The bankruptcy court was instructed to determine the extent of the debtors' interest in the real property, their intent in making the real property their homestead, and whether the debtors maintained the real property as their principal residence. Here, the Debtor states, without supporting evidence, that he and his family have a right to use and to possess the Calabasas Property by agreement with Illusion Ventures. (Declaration of Steven Nia ("Nia Decl."), doc. 161-1, ¶ 10.) The Debtor also admits that he resided at the Encino Property on the petition date, but he subsequently amended his schedules to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Steven Nia**

**Chapter 7**

indicate that he now resides at the Calabasas Property. Based on his alleged residence at the Calabasas Property, the Debtor asserted a homestead exemption in the Calabasas Property in the amount of \$100,000, pursuant to California Code of Civil Procedure § 704.730. (Doc. 113, at p. 18.)

It is not clear that the Debtor is entitled to claim this homestead exemption. "Pursuant to California law, the factors a court should consider in determining residency for homestead purposes are physical occupancy of the property and the intention with which the property is occupied." *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 21 (9th Cir. B.A.P. 2003). In *Kelley*, the Bankruptcy Appellate Panel for the Ninth Circuit found that a debtor was not entitled to claim a homestead exemption in a real property because (i) he did not reside in the real property on the petition date; and (ii) he had no intent of making the real property his residence. Here, the Debtor admits that he resided at the Encino Property on the petition date. Based on his amended schedules, the Debtor appears to have an intent of residing in the Calabasas Property.

Notwithstanding the foregoing, the Debtor has not provided evidence of any agreement with Illusion Ventures allowing him the use and possession of the Calabasas Property. Apart from his statement that he has paid the Chings \$486,000 over the years, the Debtor has not provided any evidence of such payments that might give rise to an equitable interest. (Nia Decl., ¶ 6.)

Accordingly, the Court's prior ruling was not based on an error of fact, but on the Debtor's lack of evidence for such equitable interest. In his Motion to Reconsider, the Debtor still has not presented sufficient evidence of such equitable interest. Even if such evidence existed, the Debtor cannot argue that such evidence, if any, was unavailable before the hearing on the Second RFS Motion.

**2. *Equity in the Calabasas Property***

In addition, the Debtor argues that the Court erred when it determined there was no equity in the Calabasas Property. In support of the Motion to Reconsider, the Debtor attaches a recent appraisal valuing the Calabasas Property at \$2.2 million. (Doc. 161, Exh. D.)

However, in the RFS Ruling, the Court did not make a finding as to equity in the Calabasas Property. In granting relief under § 362(d)(1), the Court noted that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

---

9:30 AM

CONT...

Steven Nia

Chapter 7

Trustee sold the estate's interest in the Calabasas Property to the Debtor, and therefore the Calabasas Property was no longer property of the estate. To the extent that the automatic stay still applies, the Chings' interest in the Calabasas Property was not adequately protected, because the Debtor had not made monthly deed of trust payments or paid property taxes for two years. As for relief under § 362(d)(2), such relief was moot in light of the Sale Motion, and because the Calabasas Property no longer appeared to be property of the estate.

Accordingly, because the Court did not address the lack of equity in the RFS Ruling, it does not appear that the Court erred with respect to the equity in the Calabasas Property.

***E. Alleged Errors of Fact in Granting Relief Under § 362(d)(4)***

In the Motion to Reconsider, the Debtor also argues that the Court made errors of fact in granting relief under § 362(d)(4).

***1. Multiple Filings Affecting the Calabasas Property***

The Debtor admits that multiple filings have affected the Calabasas Property. In the Motion to Reconsider, the Debtor argues that each of the filings had a different "purpose." The Illusion Ventures case and the pending case were allegedly filed to resolve problems concerning the Calabasas Property. In the Second Chapter 11 Case, the Debtor listed the Calabasas Property in his schedules, but he filed the Second Chapter 11 Case to halt foreclosure on the Encino Property, not the Calabasas Property. The record reflects that the Illusion Ventures case and the pending case were both filed to halt trustee's sales scheduled for the Calabasas Property.

Based on this record, it appears that there were multiple bankruptcy filings affecting the Calabasas Property. In the RFS Ruling, the Court found that these multiple filings were part of a scheme to delay, hinder, or defraud the Chings. Because of the filings, the Chings have been delayed and hindered from exercising their rights as to the Calabasas Property. Accordingly, there was no error regarding the nature of these prior filings.

***2. Equitable Interest in the Calabasas Property***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

CONT...

Steven Nia

Chapter 7

As noted above, the Debtor did not provide evidence of his equitable interest in the Calabasas Property in opposition to the Second RFS Motion. Aside from remarks in his latest declaration regarding amounts paid to the Chings over the years and his state court actions against the Chings, the Debtor still has not provided sufficient evidence of any equitable interest.

**3. *The Debtor's Failure to Comply with Statutory Duties***

The Debtor disputes the Court's finding that he failed to comply with statutory duties. The Debtor contends that he cured any minor deficiencies in his case commencement documents by the applicable deadlines. However, the Debtor's failure to comply with statutory duties arose from the Conversion Order, which directed the Debtor to comply with FRBP 1019. FRBP 1019 provides for deadlines to file certain documents upon conversion of a reorganization case to a chapter 7 case. Because the Debtor did not file such documents, the pending case was dismissed. Accordingly, the Court did not err when citing the Debtor's failure to comply with statutory duties as grounds for relief under § 362(d)(4).

**4. *The Court's Alleged Reliance on Matters Outside the Record***

The Debtor also alleges that the Court "went beyond the record to consider some selected documents in this case and in other cases" to support its ruling under § 362(d)(4). However, the Debtor does not identify what documents were "beyond the record" or what documents the Court inappropriately considered in its RFS Ruling. Accordingly, the Court cannot determine whether it erred in the evidence it considered.

**F. *Alleged Errors in Granting Annulment of the Automatic Stay***

The Debtor argues that in issuing the RFS Ruling, the Court exceeded the scope of a motion for relief from stay, which is a summary proceeding that requires a court to "make only the minimum rulings necessary." (Doc. 161, at p. 12.) However, in the Central District of California, the mandatory relief from stay motion forms allow movants to select "annulment" as a form of relief. Courts in this district routinely grant annulment if the facts of the case support annulment of the automatic stay. The Debtor provides no authority that the Court improperly exceeded its authority to grant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**  
annulment.

**Chapter 7**

The Debtor is correct that the Court did not grant relief from the automatic stay in the Illusion Ventures case on the grounds of bad faith. The Debtor is also correct that the Court's statement in the RFS Ruling—that the Debtor had not paid his obligations on the Calabasas Property "for several years"—is not consistent with statements elsewhere in the RFS Ruling that the Debtor had not made at least 24 deed of trust or property tax payments as to the Calabasas Property.

Notwithstanding the above, such errors appear to be harmless. It is true that the Court did not find that the Illusion Ventures case was filed in bad faith. However, the lack of a bad faith finding in the Illusion Ventures case does not preclude a finding of bad faith in the pending case under the totality of circumstances, that would support annulment of the automatic stay.

Similarly, the Court notes that the inadvertent use of the word "several" does not alter the result of the RFS Ruling. Whether 24 months or several years, the fact remains that the Debtor did not pay his obligations on the Calabasas Property for at least 24 months. Here, the Court found that such delinquent payments were sufficient grounds for relief from, and annulment of, the automatic stay in the Debtor's case as to the Calabasas Property.

***G. Contradiction re: Amounts the Chings Are Owed***

Finally, the Debtor argues that the Second RFS Motion contained inconsistencies in the amount of the Chings' asserted debt. The Chings stated that they are owed \$190,000 in payments, plus \$72,000 for property tax advances, for an approximate total of \$262,000. (Doc. 141, at p. 5.) In Mr. Ching's declaration, he states that the Chings are owed \$619,028. (Doc. 139, at p. 7.)

However, the Chings note that the \$192,000 stated in its memorandum of points and authorities was not intended to represent the full amount owed, which is \$619,028. Accordingly, there does not appear to be any contradiction regarding the amount owed to the Chings.

**III. CONCLUSION**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Steven Nia**

**Chapter 7**

In light of the foregoing, the Court will deny the Motion to Reconsider.

The Chings must submit the order within seven (7) days.

***Tentative Ruling re Evidentiary Objections to Declaration of Stanley K.S. Ching***

[doc. 175]

paras. 3–7: overrule

para. 8: overrule

***Tentative Ruling re Evidentiary Objections to Declaration of Alan Nahmias*** [doc. 176]

paras. 3–12: overrule

para. 13: overrule

Exhs. A–I: overrule

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11914 William G Hill**

**Chapter 7**

**#6.00** Debtor's motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 7

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

What is the debtor's position as to the effect of the automatic stay, if it's continued, on the motion for fines and/or disgorgement against the debtor, filed by the United States Trustee (the "UST") in the Johnnie Fields bankruptcy case (doc. 41, 2:17-bk-11416-NB)?

The Court notes that the debtor and the UST have reached a settlement regarding the Orders to Show Cause issued in the bankruptcy cases of Virgilio Armando Cerna Choto (1:17-bk-12131-VK), and Mary F. Kimbell (1:17-bk-13183-VK), and that the debtor has agreed to return funds to Mr. Choto, irrespective of any continuance of the automatic stay.

-

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

**Debtor(s):**

William G Hill

Represented By  
Gary S Saunders

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

1:18-11873 Vincent Cha

Chapter 13

#7.00 Motion for relief from stay [UD]

DESERT SHADOWS INVESTMENTS LLC  
VS  
DEBTOR

Docket 7

\*\*\* VACATED \*\*\* REASON: Motion is not in compliance with local  
bankruptcy rule 5005-2(d)(1). Motion is OFF calendar.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Vincent Cha

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#8.00** Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

Docket 101

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Carmit Benbaruh

Represented By

Leslie Richards - SUSPENDED BK -

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12788 Gerardo Paz and Araceli Diane Paz**

**Chapter 13**

**#9.00 Motion for relief from stay [PP]**

AMERICREDIT FINANCIAL SERVICES, INC.  
VS  
DEBTOR

Docket 36

**\*\*\* VACATED \*\*\* REASON: APO entered 8/17/18 [doc. 41]**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gerardo Paz

Represented By  
Khachik Akhkashian

**Joint Debtor(s):**

Araceli Diane Paz

Represented By  
Khachik Akhkashian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:14-15332 Ruben Adrian Murguia**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

US BANK TRUST N.A.  
VS  
DEBTOR

Docket 38

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ruben Adrian Murguia

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#11.00 Motion for relief from stay [RP]

WELLS FARGO BANK N.A.  
VS  
DEBTOR

**Stip to continue filed 8/20/18**

Docket 56

\*\*\* VACATED \*\*\* REASON: Order entered 8/21/18 continuing hearing to  
10/3/18 at 9:30 AM.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JeanPaul Reneaux

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11524 Jose Luis Chavez**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

**Case dismissed 8/6/2018**

Docket 20

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

This case was dismissed on August 6, 2018. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jose Luis Chavez**

**Chapter 13**

**Party Information**

**Debtor(s):**

Jose Luis Chavez

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11905 John Joseph Barry**

**Chapter 13**

**#13.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 11

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

John Joseph Barry

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11941 Nathan Cohen**

**Chapter 13**

**#14.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 8

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Nathan Cohen

Represented By  
Sanaz S Bereliani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, August 22, 2018

Hearing Room 301

9:30 AM

1:17-11136 Capri Coast Capital, Inc.

Chapter 11

#15.00 Motion for relief from stay [AN]

JOHN ROBERT KOCHAKJI  
VS  
DEBTOR

**Order appr stip ent 8/21/2018**

Docket 340

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 8/21/18  
[doc. 365]

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#16.00** Motion for relief from stay [RP] (31194 La Baya Dr #207)

THE FOURTH AMENDED REVOCABLE LIVING TRUST OF  
KREKOR GARABET TCHAKIAN AND CHAKE TCHAKIAN  
VS  
DEBTOR

Docket 61

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Unless an appearance is made at the hearing on August 22, 2018, the hearing is continued to September 12, 2018 at 9:30 a.m., and movant must cure the deficiencies noted below on or before August 22, 2018.**

In accordance with Fed. R. Bankr. P. 4001(a)(1), movant must properly serve the motion and notice of the continued hearing and the deadline to file a written response on the creditors included on the list filed under Fed. R. Bankr. P. 1007(d). *See* doc. 1 [List of Creditors Holding 20 Largest Unsecured Claims].

Appearances on August 22, 2018 are excused.

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

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#17.00** Motion for relief from stay [RP] (31194 La Baya Dr #203)

THE FOURTH AMENDED REVOCABLE LIVING TRUST OF  
KREKOR GARABET TCHAKIAN AND CHAKE TCHAKIAN  
VS  
DEBTOR

Docket 62

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Unless an appearance is made at the hearing on August 22, 2018, the hearing is continued to September 12, 2018 at 9:30 a.m., and movant must cure the deficiencies noted below on or before August 22, 2018.**

In accordance with Fed. R. Bankr. P. 4001(a)(1), movant must properly serve the motion and notice of the continued hearing and the deadline to file a written response on the creditors included on the list filed under Fed. R. Bankr. P. 1007(d). *See* doc. 1 [List of Creditors Holding 20 Largest Unsecured Claims].

Appearances on August 22, 2018 are excused.

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

1:30 PM

**1:13-11215 Cindy M Montano**

**Chapter 7**

Adv#: 1:17-01111 Melendrez v. Montano

**#18.00** Pretrial conference re complaint for determination  
of the dischargeability of a claim

from: 2/14/18

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

A pretrial stipulation has not been filed in accordance with the Court's scheduling order [doc. 9] and Local Bankruptcy Rule 7016-1(b), (c), (d) and/or (e). What is the status of the preparation of a joint pretrial stipulation?

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

**Debtor(s):**

Cindy M Montano Pro Se

**Defendant(s):**

Cindy M Montano Pro Se

**Plaintiff(s):**

Antonio Melendrez Represented By  
Michael J Armenta

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#19.00** Pretrial conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18; 8/8/18

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule ("LBR") 7016-1(c), it appears the plaintiff did not send the defendant a proposed joint pretrial stipulation "not later than 4:00 p.m. on the 7th day prior to the last day for filing... the proposed pretrial stipulation." Here, the deadline to file a joint pretrial stipulation was August 13, 2018. As such, pursuant to LBR 7016-1(c), the plaintiff had an obligation to ensure that the defendant received a proposed joint pretrial stipulation not later than 4:00 p.m. on August 6, 2018. The emails between the plaintiff and the defendant [doc. 37] indicate that the plaintiff did not send the proposed joint pretrial stipulation to the defendant until August 13, 2018. As a result, the defendant has not had a meaningful opportunity to review the proposed joint pretrial stipulation (the "JPS") [doc. 36].

In the JPS, the parties indicate that they do not dispute any of the pertinent facts (under Section I of the JPS). Does the defendant dispute any of the facts in paragraphs 1-70 of Section I? The defendant should review these facts and indicate whether he agrees or disagrees with the facts. To the extent the defendant disagrees, or has additional facts that are not included in this section, the defendant should write down his version of facts under Section II of the JPS.

Moreover, under Section III of the JPS, the parties indicate that the Court will adjudicate the defendant's liability under 11 U.S.C. § 523(a)(2)(B). However, the plaintiff did not include a claim under 11 U.S.C. § 523(a)(2)(B) in the complaint. The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

plaintiff included only a claim under 11 U.S.C. § 523(a)(2)(A). Consequently, the Court will strike 11 U.S.C. § 523(a)(2)(B) as an issue of law for trial.

Further, the defendant has not provided an exhibit list. Does the defendant intend to offer any exhibits at trial? If so, the defendant must provide a list of the exhibits he intends to use at trial and describe each exhibit in detail.

The parties also indicate that discovery is not complete and that the parties anticipate settlement discussions. Aside from the issues discussed in the plaintiff's motion to compel, do the parties anticipate additional discovery? If the parties envision engaging in settlement discussions, are the parties willing to attend mediation?

The Court will continue this pretrial conference to **2:30 p.m. on September 5, 2018**, to be held with the continued hearing on the plaintiff's motion to compel. No later than **August 29, 2018**, the parties must file a revised joint pretrial stipulation conforming to the instructions above. Prior to that date, the defendant must review the current JPS [doc. 36] and propose any changes to the plaintiff by **August 27, 2018**.

Appearances are **not** excused, and the parties must appear in person, or by phone, on August 22, 2018.

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

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

**#20.00** Plaintiff's motion in limine to exclude certain exhibits

Docket 65

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On August 1, 2016, Mahshid Loghmani and Mohsen Loghmani ("Defendants") filed a voluntary chapter 7 petition.

On November 1, 2016, Tessie Cleveland Community Services Corp. ("Plaintiff") filed a complaint against Defendants, initiating this adversary proceeding. On October 27, 2017, Plaintiff filed the first amended complaint (the "FAC"), requesting a denial of Defendants' discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5) and nondischargeability of the debt owed to it under 11 U.S.C. § 523(a)(2)(A), (a)(6) and (a)(10).

On November 17, 2017, Plaintiff filed a motion for summary judgment (the "MSJ") [doc. 33]. On February 22, 2018, the Court entered a ruling on the MSJ [doc. 47], holding that the Court will enter judgment on Plaintiff's claims under 11 U.S.C. § 523(a)(2)(A) and (a)(10) as to Mr. Loghmani, but will not enter judgment on Plaintiff's remaining claims under 11 U.S.C. § 523(a)(2)(A) or on Plaintiff's claim under 11 U.S.C. § 523(a)(6). On April 16, 2018, the Court entered a judgment against Mr. Loghmani under 11 U.S.C. § 523(a)(2)(A) and (a)(10) [doc. 52].

On May 23, 2018, the parties filed a joint pretrial stipulation (the "JPS") [doc. 57]. In the JPS, the parties agreed that the Court would only adjudicate Plaintiff's claims under 11 U.S.C. § 727(a)(2), (a)(3) and (a)(4)(A) at trial. Specifically, the parties

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

agreed that the following issues would be tried: (A) whether Defendants, with intent to hinder, delay or defraud a creditor or an officer of the estate, transferred, removed, destroyed, mutilated or concealed property of the debtor within one year before the petition date or property of the estate after the petition date; (B) whether Defendants concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information from which Defendants' financial condition or business transactions might be ascertained; and (C) whether Defendants knowingly and fraudulently, in or in connection with their bankruptcy case, made a false oath or account.

On July 20, 2018, Defendants filed their witness list and their exhibit list ("Defendants' Exhibit List") [doc. 64]. On August 6, 2018, the Court entered an order approving the JPS [doc. 71].

On July 23, 2018, Plaintiff filed a motion in limine (the "Motion") [doc. 65] to exclude exhibits 105 through 109 (the "Subject Exhibits"). Exhibit 105 relates to the death of Moses Chadwick, who co-founded Plaintiff and served as its first Executive Director. The remaining exhibits relate to misconduct allegations against James J. Little, who represented Plaintiff in state court, and an online memorial for Mr. Little. Plaintiff objects to the Subject Exhibits on the basis that the Subject Exhibits are irrelevant. Defendants have not timely filed a response to the Motion.

## **II. ANALYSIS**

Pursuant to Federal Rule of Evidence 401--

Evidence is relevant if—

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Pursuant to Federal Rule of Evidence 402, "[i]rrelevant evidence is not admissible." See also *Boyd v. City & Cty. of San Francisco*, 576 F.3d 938, 943 (9th Cir. 2009) ("Only relevant evidence... is admissible in federal court.").



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

Here, the Subject Exhibits bear no relevance to Plaintiff's claims under 11 U.S.C. § 727, which involve allegations about Defendants' conduct with respect to their assets and records and alleged false oaths made by Defendants. It is unclear how the deaths of Mr. Chadwick and Mr. Little or the allegations of misconduct against Mr. Little have any relevance to whether Defendants violated any of the subsections of 11 U.S.C. § 727. Moreover, Defendants did not file a response to the Motion articulating any reason why the Subject Exhibits either tend to make a fact more or less probable or are of any consequence in determining this action. As a result, the Court will exclude the Subject Exhibits from being introduced at trial.

**III. CONCLUSION**

The Court will grant the Motion and exclude the Subject Exhibits from being introduced at trial.

Plaintiff must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

**Plaintiff(s):**

Tessie Cleveland Community

Represented By

Bruce M Cohen

Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By

Richard A Marshack

Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10465 Ziv Kanon**

**Chapter 13**

Adv#: 1:18-01049 Kanon v. Wurzel et al

- #21.00** Motion of Marc and Doris Wurzel and Marc and Doris Wurzel Family Trust to  
(1) Dismiss adversary proceeding for failure to state a claim upon which relief can be granted, pursuant to FRCP 12(b)(6); or  
(2) in the alternative, to abstain from hearing this adversary proceeding, pursuant to 28 U.S.C. §§ 1334(c)(1) and (2); or  
(3) in the alternative, to stay adversary proceeding pending outcome of state court actions

Docket 5

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

***A. Prepetition Events***

On January 27, 2016, the Marc W. Wurzel and Doris A. Wurzel Trust (the "Trust") entered into a commercial lease agreement with Amir Yarkoni dba HD World Equipment ("HD World") to lease the real property located at 8083 San Fernando Road, Sun Valley, CA 91352 (the "Sun Valley Property"). Declaration of Marc Wurzel ("Wurzel Declaration"), ¶ 2, Exhibit 2. An individual named Amir Yarkoni completed the rental application to secure the lease (the "Rental Application") on behalf of HD World. Wurzel Declaration, ¶ 3, Exhibit 1. In the Rental Application, Mr. Yarkoni indicated that an individual named Paz Z. Kanon ("Paz") held a 25% ownership interest in HD World. *Id.*

On October 11, 2016, the Trust sent Mr. Yarkoni, HD World and Paz a Three-Day Notice to Pay Rent or Quit. Wurzel Declaration, ¶ 4, Exhibit 4. On October 27, 2016, the Trust filed an unlawful detainer complaint against Mr. Yarkoni and HD World. Wurzel Declaration, ¶ 5, Exhibit 5. On November 18, 2016, the Trust filed an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT...

**Ziv Kanon**

**Chapter 13**

unlawful detainer action against Ziv Kanon ("Debtor"), Mr. Yarkoni, Paz and HD World. Wurzel Declaration, ¶ 5, Exhibit 6.

On March 15, 2017, Marc W. Wurzel, on the one hand, and Debtor, Paz (who is listed as an "aka" of Debtor) and Dorit Kanon, on the other hand, executed the *Unlawful Detainer Stipulation and Judgment* (the "March Stipulation and Judgment"). Wurzel Declaration, ¶ 6, Exhibit 7. In the March Stipulation and Judgment, the parties agreed to enter judgment against the defendants, including Debtor, in the amount of \$36,882. *Id.* In relevant part, the March Stipulation and Judgment provided that Mr. Wurzel was awarded possession of the Sun Valley Property and that the defendants, including Debtor, forfeited their rights under the commercial lease agreement. *Id.* The parties also agreed to the following in the March Stipulation and Judgment:

Any items left on premises have zero value + may be disposed of by landlord. No actions will be taken that delay lockout.

...

Lockout will be stayed, pending the following...payments. [The defendants] to pay in certified funds \$5,100 on or before 3/24/17, by 12:00 noon- will stay lockout [until] 4/15/17. Another \$5,100 by 3/31/17 by noon will stay lockout [until] 5/15/17. There will be no further stays and these payments in no way re-instate tenancy are done solely in consideration of providing tenants time to relocate. Payments made to Wurzel Family Trust.

*Id.* Subsequently, the parties agreed to a second stay of the lockout through August 15, 2017 (the "May UD Stipulation"). Wurzel Declaration, ¶ 8, Exhibit 10. In relevant part, the May UD Stipulation provided that, aside from making the payments outlined above, Debtor and Ms. Kanon (collectively, the "Kanons") would "[r]emove all inventory, machinery, personal property and trash from the premises, regardless of ownership, by August 10, 2017." *Id.* The May UD Stipulation also included the following language:

This stay is being agreed to by plaintiff as an accommodation to defendants and without prejudice to plaintiff's position. Defendants agree to and will not file any documents that would delay or hamper the enforcement of this unlawful detainer judgment, including but not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ziv Kanon**

**Chapter 13**

limited to, a request to set aside or vacate the judgment, a stay of execution, a relief from forfeiture, a bankruptcy, an appeal or any action that would stay enforcement of the writ or vacate the judgment. If any such papers are filed, defendants agree that such filing will not prevent plaintiff from executing on the writ of possession forthwith and retaining/crediting all monies paid to plaintiff under this agreement.

*Id.* The May UD Stipulation was signed by Debtor "aka Paz Kanon" and Ms. Kanon.

On October 5, 2017, the parties entered into a third unlawful detainer stipulation (the "October UD Stipulation"). Wurzel Declaration, ¶ 10, Exhibit 11. In the October UD Stipulation, the parties agreed that the prior March Stipulation and Judgment "stands as previously entered," but that Mr. Wurzel would agree to a further stay of the lockout until February 15, 2018. *Id.* The parties also agreed that "Defendant(s) rights under [the] lease or rental agreement are forfeited" and that "Plaintiff is awarded possession of the [Sun Valley Property]." *Id.* Moreover, the October UD Stipulation provided:

Anything left behind after moveout will belong to Plaintiff and may be disposed of without notice. No actions will be taken to delay the lockout. Any judgment not already obtained on this case will remain unaffected.

...

This does not reinstate the tenancy.

*Id.* The Kanons apparently did not move out by February 15, 2018. As such, on February 21, 2018, at 8:30 a.m., the Los Angeles County Sheriff's Department evicted the Kanons from the Sun Valley Property. Wurzel Declaration, ¶ 11, Exhibit 12.

***B. Debtor's Bankruptcy Case and the Adversary Proceeding***

On February 21, 2018, at 12:42 p.m., Debtor filed a chapter 13 petition. On March 20, 2018, Debtor filed a motion for turnover in the bankruptcy case (the "Motion for Turnover") [Bankruptcy Docket, doc. 20], asking that Mr. Wurzel, Ms. Wurzel and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ziv Kanon**

**Chapter 13**

the Trust (collectively, the "Wurzels") turn over equipment left on the Sun Valley Property (the "Equipment") to the estate. Debtor attached the March Stipulation and Judgment as well as the October UD Stipulation to the Motion for Turnover.

The Wurzels opposed the Motion for Turnover [Bankruptcy Docket, doc. 29]. On April 10, 2018, the Court held a hearing on the Motion for Turnover. At that time, the Court issued a ruling (the "Turnover Ruling") [Bankruptcy Docket, doc. 30], finding that the Motion for Turnover was procedurally improper because, pursuant to Federal Rule of Bankruptcy Procedure 7001(1), Debtor should have requested turnover through an adversary proceeding. The Court also held that, even if the request was procedurally proper, requests for turnover are inappropriate where there is a dispute over the ownership of the subject property. The Court found that "[h]ere, the parties dispute the ownership of the Equipment at the time Debtor filed the petition, and it is not evident that Debtor currently has an interest in the Equipment." Turnover Ruling, p. 3. On April 24, 2018, the Court entered an order denying the Motion for Turnover [Bankruptcy Docket, doc. 38].

On April 18, 2018, the Wurzels filed a motion for relief from the automatic stay (the "RFS Motion") [Bankruptcy Docket, doc. 34]. On May 9, 2018, the Court held a hearing on the RFS Motion. At that time, the Court issued a ruling (the "RFS Ruling") [doc. 49] denying the RFS Motion as moot because, under 11 U.S.C. § 362(c)(3), the automatic stay terminated on March 22, 2018. The Court held that the Wurzels were "free to proceed with the unlawful detainer action against Debtor." RFS Ruling, p. 3. On June 15, 2018, the Court entered an order denying the RFS Motion as moot and reaffirming that the automatic stay was previously terminated [doc. 54].

On May 4, 2018, Debtor filed a complaint against the Wurzels (the "Complaint"). In the Complaint, Debtor alleges that, at the time of the lockout, Debtor had "over 200 units of machinery, equipment, tools, parts, supplies, personal supplies and business records" at the Sun Valley Property and that the Wurzels have refused to allow Debtor to access the Equipment to the detriment of Debtor and Debtor's creditors. Complaint, ¶¶ 14-15. In light of these allegations, Debtor requests turnover of the Equipment to the estate.

In May 2018, four non-debtor parties initiated complaints in state court asserting an interest in the Equipment. Wurzel Declaration, ¶ 13, Exhibit 18. On May 18, 2018,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ziv Kanon**

**Chapter 13**

Paz Kanon filed a complaint against the Wurzels; on May 22, 2018, Ms. Kanon filed a complaint against the Wurzels; on May 25, 2018, Harry Babadjanian filed a complaint against the Wurzels; and, on the same day, Richard Lee Welsh filed a complaint against the Wurzels. *Id.*

On June 4, 2018, the Wurzels filed a motion to dismiss the Complaint (the "Motion") [doc. 5], requesting that the Complaint be dismissed for failure to state a claim or, in the alternative, that the Court abstain from this proceeding or, in the alternative, that the Court stay this proceeding until the state court resolves all of the issues surrounding the Equipment. On August 8, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 12]. In the Opposition, Debtor asserts that the language in the March Stipulation and Judgment does not confer possession of the Equipment onto the Wurzels and that Debtor's claim for turnover automatically brings the issue of ownership of the Equipment within the purview of this Court, citing *In re Kincaid*, 917 F.2d 1162, 1165 (9th Cir. 1990). Debtor also opposes abstention or a stay of this proceeding. On August 15, 2018, the Wurzels filed a reply to the Opposition [doc. 14].

## **II. ANALYSIS**

### ***A. Federal Rule of Civil Procedure ("Rule") 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ziv Kanon**

**Chapter 13**

unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). "A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

***B. Turnover***

Pursuant to 11 U.S.C. § 541—

- (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
  - (1) Except as provided in subsections (b) and (c)(2) of this



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT...

**Ziv Kanon**

**Chapter 13**

section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Pursuant to 11 U.S.C. § 542—

- (a) 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 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.

"A turnover proceeding is 'not intended as a remedy to determine the disputed rights of parties to property; rather it is intended as the remedy to obtain what is acknowledged to be property of the bankruptcy estate.'" *In re Century City Doctors Hosp., LLC*, 466 B.R. 1, 19 (Bankr. C.D. Cal. 2012) (quoting *Lauria v. Titan Sec. Ltd.*, 243 B.R. 705, 708 (Bankr. N.D. Ill. 2000)). The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has addressed the tactic of using turnover motions to litigate non-core proceedings:

Despite [movant's] attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by [movant] entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes claims for relief for only one potential core issue—turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. Here, the amounts, if any...are in dispute and this dispute rests on breach of contract issues. In fact, [movant] made a prepetition demand for arbitration of the dispute, described at that time as breach of contract and accounting causes of action. Breach of contract actions are noncore claims.

*In re Gurga*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (citations omitted).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ziv Kanon**

**Chapter 13**

Here, Debtor has not established a claim for relief under Rule 12(b)(6). In the Complaint, Debtor provides conclusory allegations regarding ownership of the Equipment. The Complaint does not include any allegations regarding the nature of Debtor's interest, if any, in the Equipment. For instance, Debtor alleges that "as of the Petition Date... [Debtor] had a legal and/or equitable interest in the [Equipment]...." Complaint, ¶ 18. However, Debtor does not include any allegations specifying the nature and extent of any "legal and/or equitable" interest. As a result, the Complaint is insufficient on its face.

Even if the Court treated the allegations in the Complaint as sufficient, the allegations are belied by the March Stipulation and Judgment, the May UD Stipulation and the October UD Stipulation, as well as by the four complaints filed in state court by non-debtor parties (assuming Paz Kanon is a nondebtor party). Generally, for purposes of a motion to dismiss under Rule 12(b)(6), the Court considers the four corners of a complaint. Certainly, Debtor has taken great pains to exclude any mention of the state court filings in the Complaint. However, the Court is free to take judicial notice of state court filings. Federal Rule of Evidence 201(b).

The March Stipulation and Judgment explicitly terminated any interest Debtor had in the commercial lease. Significantly, the parties agreed to and the state court approved the following language in the March Stipulation and Judgment: "Any items left on premises have zero value + may be disposed of by landlord." Wurzel Declaration, ¶ 6, Exhibit 7. In the May UD Stipulation, Debtor agreed to "[r]emove all inventory, machinery, personal property and trash from the premises, regardless of ownership, by August 10, 2017." Wurzel Declaration, ¶ 8, Exhibit 10. In the October UD Stipulation, which reaffirmed that the March Stipulation and Judgment remained in effect, Debtor agreed that "[a]nything left behind after moveout will belong to [the Wurzels] and may be disposed of without notice." Wurzel Declaration, ¶ 10, Exhibit 11. These documents, which are public record and subject to judicial notice, contradict the conclusory allegation in the Complaint that Debtor had an interest in the Equipment as of the petition date.

As noted above and previously explained by the Court in the Turnover Ruling, a turnover proceeding is not intended to adjudicate the property rights of parties. Rather, a turnover proceeding is intended to bring into the estate property which is already established as property of the estate. Debtor's reliance on *Kincaid*, 917 F.2d

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ziv Kanon**

**Chapter 13**

at 1165, is misplaced. There, in response to a motion for turnover by the chapter 7 trustee, a plan administrator holding life insurance contributions refused to turn over the funds on the basis that any interest the debtor had in the subject funds had not matured and that any interest the estate had in the funds constituted an action to collect a future debt. *Kincaid*, 917 F.2d at 1164-65. The Court of Appeals held that the administrator mischaracterized the action because the plan documents established that the debtor had a present, vested interest in the subject funds. *Id.*, at 1165. As noted by the Court of Appeals:

The Plan contains no provision by which Kincaid's interest could ever be distributed to other employees or revert to the employer. The administrator itself has no personal title to Kincaid's interest in the Plan. Instead, the money is merely being held in trust by the administrator on Kincaid's behalf. Thus, the trustee's action to obtain that interest is quite simply a proceeding to force the administrator to turn over something that belongs to the debtor.

*Id.* Here, Debtor does not have an established interest in the Equipment. On the contrary, in addition to the Wurzels' claim of an interest in the Equipment by operation of the state court stipulations and judgment, there are several nondebtor parties asserting an interest in the Equipment. Wurzel Declaration, ¶ 13, Exhibit 18. There is an active dispute as to ownership of the Equipment and, as a result, Debtor is not entitled to turnover of the Equipment.

Notably, Debtor is not asking this Court to determine ownership of the Equipment. As it stands, the Complaint presumes that Debtor owns the Equipment and requests only turnover. Debtor has not asserted other claims that would require an adjudication of the parties' respective interests, if any, in the Equipment. As such, the Court's dismissal of the Complaint will not have any effect on the parties' state court litigation regarding ownership of the Equipment. The Court having confirmed in the RFS Ruling that the automatic stay has terminated, the parties are free to prosecute the issue of ownership in state court. Given the allegations in the Complaint, that issue is not before the Court in this adversary proceeding. The only issue being turnover, and the Complaint having failed to sufficiently plead a claim for turnover, the Court will dismiss the Complaint. In the future, should the state court find that Debtor has an interest in all or part of the Equipment, Debtor may request turnover.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ziv Kanon

Chapter 13

*C. Abstention or a Stay*

Because the Court will dismiss the Complaint, the Wurzels' request for abstention is moot. Even if the Court did not dismiss the Complaint and elected to, for example, stay the adversary proceeding, abstention is not warranted here. As mentioned above, the issues to be decided by the state court are different from Debtor's turnover claim. The state court will adjudicate the various ownership claims asserted by the Wurzels, the Kanons and other third parties. The issue before this Court is different. This Court is not deciding which party has which interest in the Equipment; rather, once there are established interests in the Equipment, this Court may adjudicate whether the Equipment should be turned over to the estate.

Once again, the Complaint presumes ownership of the Equipment and seeks only turnover of the same. The issues regarding interpretation of the state court stipulations and judgment and any other claims the Kanons and the Wurzels may have as to the Equipment and as against each other are not before this Court. This Court also is not presented with the issues raised by the multiple third parties who have filed state court complaints asserting an interest in the Equipment. Those issues are properly before the state court and should be adjudicated by the state court. Because those issues are not before this Court, this Court would not need to "abstain" from this proceeding even if the Court was not dismissing the Complaint. In any case, at this time, the issue of abstention is moot because the Court is dismissing the Complaint. Finally, because the Court will dismiss the Complaint, the Wurzels' request to stay the adversary proceeding is moot.

**III. CONCLUSION**

The Court will dismiss the Complaint. Debtor may renew his request for turnover if Debtor obtains a final judgment holding that Debtor had an interest in the Equipment as of the petition date.

The Wurzels must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Ziv Kanon

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ziv Kanon**

**Chapter 13**

David S Hagen

**Defendant(s):**

Marc Wurzel

Represented By  
Joseph Caceres

Doris Wurzel

Represented By  
Joseph Caceres

Marc and Doris Wurzel Family Trust

Represented By  
Joseph Caceres

**Plaintiff(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10465 Ziv Kanon**

**Chapter 13**

Adv#: 1:18-01049 Kanon v. Wurzel et al

**#22.00** Status conference re: complaint for  
(1) Turnover of property of the estate pursuant to 11 USC 542(a);  
(2) Judgment in the amount of the value of the property of the  
estate pursuant to 11 USC 542(a)

fr. 7/18/18(stip)

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

The Court will be dismissing this adversary proceeding, without prejudice. *See* calendar no. 21 at 2:30.

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

**Debtor(s):**

Ziv Kanon

Represented By  
David S Hagen

**Defendant(s):**

Marc Wurzel

Pro Se

Doris Wurzel

Pro Se

Marc and Doris Wurzel Family Trust

Pro Se

**Plaintiff(s):**

Ziv Kanon

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#23.00** Trial re first amended complaint to determine dischargeability of indebtedness [FOR RULING]

fr. 7/8/15; 8/12/15; 10/7/15; 11/4/15; 12/2/15; 2/10/16(stip); 3/16/16; 5/4/16; 4/12/17(advanced); 4/5/17; 4/14/17; 6/7/17; 7/12/17; 12/20/17; 2/14/18; 3/7/18; 3/14/18; 3/21/18; 3/23/18;4/4/18; 6/4/18; 8/15/18

Docket 12

**Judge:**

For the reasons set forth below, the Court will enter judgment under 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6) in favor of Ernest Charles Barreca ("Defendant").

**I. BACKGROUND**

**A. Gerson Fox's Active Involvement**

Gerson Fox is a real estate investor who funded investments proposed by Michael Kamen, his longtime business associate. [FN1] These investments took the form of several single purpose entity limited liability companies or limited partnerships (collectively, the "SPEs"). At least some of the SPEs had ownership interests in commercial real properties. Gerson Fox would fund the SPEs by providing funds from his personal accounts. Mr. Kamen's property management company, Mika Realty Group, LLC ("Mika"), oversaw the real properties owned by the SPEs.

According to Jack Garrett, an accountant hired by Gerson Fox, Gerson Fox regularly funded 100% of the purchase escrows for his real estate investments, either directly to the escrow for deposit, or by sending the funds to Mika or Foxmen Investments, LLC ("Foxmen"). Gerson and/or Gertrude Fox regularly funded a 50% interest in each SPE. Notes were not created for these "loans", and Gerson Fox's assistant did not keep track of the advances. In addition, on a monthly basis, cash calls were made to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Gerson Fox for deficit cash in various SPEs.

According to the testimony of Defendant, Mr. Kamen, and Chris Reeder, a lawyer who represented the SPEs, Gerson Fox was actively involved with the SPEs. He had his own office at Mika, and various members of Mika's staff personally assisted him. Gerson Fox would attend virtually every meeting in Mika's office, as well as meetings with Mr. Reeder concerning the SPEs' financial issues. Mr. Reeder recalled that Gerson Fox was an elderly man, but no one had concerns about Gerson Fox's mental awareness during the relevant time period.

***B. Defendant's Role with Mika***

In approximately 1996, Defendant was employed by Imperial Capital Bank ("ICB"). While employed at ICB, Defendant met Mr. Kamen and Gerson Fox, in connection with their request to restructure a loan. ICB granted Mr. Kamen's and Gerson Fox's request to extend and amend the loan terms, to accommodate the completion of extensive tenant improvements. Over the next ten years, the three men established a business and personal relationship.

In the summer of 2006, Defendant was employed by AGO Investments, a real estate investment group owned by Kevin Golshan and Sam Aghasi. During that summer, Mr. Kamen told Defendant he wanted to hire someone to replace an officer at Mika. Mr. Kamen and Defendant discussed some of the candidates for the Mika position, and Mr. Kamen asked Defendant if he had any interest in the position.

In the summer of 2006, Mr. Kamen and Gerson Fox offered, and Defendant accepted, the position of chief operating officer of Mika. As compensation, Defendant was to receive \$150,000 per year and between five to ten percent of each project in which Defendant was involved. Defendant was to report to both Mr. Kamen and Gerson Fox. As COO of Mika, Defendant's responsibilities included the day-to-day operation of all aspects of Mika, including overseeing the property management, ongoing development activities, property maintenance, financing obligations, and reviewing and presenting potential acquisition opportunities to Mr. Kamen, who would then decide whether to bring the opportunities to Gerson Fox.

On October 1, 2006, Defendant began working at Mika. At some point between October 2006 and March 2011, Defendant became the chief executive officer of Mika.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Defendant did not recall any change in his job duties for Mika after he became CEO.

Defendant stated that he reported to both Gerson Fox and Mr. Kamen equally. Either Gerson Fox or Mr. Kamen could give instructions to or authorize Defendant to perform a task. Routinely, Defendant would include Gerson Fox and Mr. Kamen on emails regarding important happenings with Mika and related real estate holdings.

Mr. Kamen testified that Defendant was “responsible” for the SPEs’ bank accounts. However, Mr. Kamen did not recall whether Defendant made any unapproved payments from the SPE bank accounts, or recall any specific payments that Defendant made. Mr. Kamen stated that during the time Defendant worked for Mika, the following individuals had signatory authority for Mika: Defendant, Mr. Kamen, William Sleeper, and Helen Chan.

For more than twenty years, William Sleeper had worked with Mr. Kamen. Mr. Sleeper was responsible for preparing financial statements; following and recording capital contributions and loans between Mr. Kamen, Gerson Fox, and the various entities; preparing reports identifying cash needs; placing insurance on the portfolio; and generally overseeing the accounting for the company.

Helen Chan was the controller for Mika and managed the day-to-day financial operations for the company. Ms. Chan oversaw payroll and some aspects of human resources, the accounts payable and receivables for the company, payment of all loans, and had direct oversight of the accounts receivable and payable staff.

***C. Gerson Fox Directs Defendant and Others to Make Transfers  
Between the SPEs***

According to Defendant, during the recent economic downturn, Cal National Bank and First National Bank of Nevada ("FNB Nevada") were seized, causing the cancellation of commitments with in-place construction loans for the SPEs’ various projects.

In 2008 through 2011, Chris Reeder of the law firm Reeder Lu handled the litigation on various matters affecting the SPEs and the personal guaranties of Mr. Kamen and Gerson Fox. At trial, Mr. Reeder testified that as of 2009, it became clear to him that the SPEs were grossly undercapitalized. Mr. Kamen and Gerson Fox had acquired

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

numerous properties, with the goal of improving them and refinancing them at a higher value. After the recession occurred, the SPEs' gross undercapitalization resulted in numerous defaults.

For most of 2010, nearly weekly meetings took place at Mr. Reeder's office, which Mr. Kamen, Gerson Fox, and Defendant regularly attended. Defendant states that Gerson Fox was informed of every problem. All of such problems centered around the lack of capital.

As Defendant and Mr. Reeder recall, in these meetings, the "solution" to the capital problems was to commingle funds and have Defendant or others at Mika move money around from SPE to SPE in order to pay bills. Defendant was granted authority from Gerson Fox or Mr. Kamen to make specific transfers. Defendant also had general authority from Mr. Kamen and Gerson Fox to make such transfers when necessary. Others at Mika also had the ability to make such transfers. At trial, Defendant denied ever signing Gerson Fox's name to any documents.

Mr. Reeder opposed the transfers between SPEs. Gerson Fox and Mr. Kamen overruled Mr. Reeder and ordered such transfers anyway. All such transfers were booked and accounted for in the records as inter-company loans.

At trial, Mr. Kamen acknowledged that funds had been transferred from one SPE to another to pay bills. He further stated that he and Gerson Fox had approved such transfers, because Gerson Fox wanted all bills to be paid and he did not want anything to go negative. Mr. Kamen also testified that Defendant had authority from Gerson Fox to make such transfers between the SPEs.

***D. Transition from Mika to Merrill***

Toward the end of 2010, Defendant spoke to Mr. Kamen and Gerson Fox about transferring Mika's duties for the management of the SPEs' properties. After they agreed, Defendant approached David Frank, CEO of The Merrill Group of Companies ("Merrill"). In November 2010, Mika began the process of transferring all of its information to Merrill in order to have the management agreements commence on January 1, 2011.

For each property, Merrill executed a separate property management agreement

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

("PMA"). Between January 1, 2011 and March 15, 2011, Defendant asked Merrill to perform all of its duties under each PMA, except for signing vendor and mortgage checks for Broadway/Workman LLC; Star News Building, LLC and Star News Building, LP, and La Vergne Food Lion Partners, LLC (collectively, the "Default Properties"). Merrill did not have signatory access to the SPEs' bank accounts. During this time, Merrill could deposit rental income into the bank accounts for each of the Default Properties. Merrill prepared checks for Defendant's signature on behalf of the Default Properties, and Mr. Frank would leave checks for Defendant to sign.

On March 2, 2011, Mr. Frank met with Gerson and Ted Fox and informed them that, after Merrill would deposit rental income collected from the Default Properties, funds would be transferred from the Default Properties' bank accounts. As a result, there were insufficient funds available to meet the Default Properties' monthly operating expenses, including mortgage payments.

On March 11, 2011, Gerson Fox terminated Defendant's employment, and Ted Fox replaced Defendant. At trial, Mr. Reeder testified that at least one additional inter-SPE transfer was made after Defendant was terminated, with Ted Fox involved in the transaction.

***E. Modern Parking, Inc.***

Modern Parking, Inc. ("Modern Parking") is a company that provided parking-related services for certain properties managed by Mika. Mohammed J. Islam is the owner of Modern Parking. At trial, Mr. Islam testified that Mika and Modern Parking "borrowed" money back and forth during their business relationship. Mr. Islam stated that he dealt with Mr. Kamen on all financial transactions.

Mr. Islam stated that he signed a promissory note in 2010 for a \$150,000 loan from Mika. However, Mr. Islam did not recognize the check evidencing payment of \$150,000 to Modern Parking from the law firm Reeder Lu's attorney-client trust account. Nor did Mr. Islam recall who arranged the loan, or the purpose of the loan. Mr. Islam stated that he repaid the \$150,000 loan. When questioned about a \$400,000 loan from Mika to Modern Parking in late 2010, Mr. Islam could not recall this specific transaction.

Mr. Islam stated that Modern Parking was sued by the chapter 7 trustee in the Star

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

News Building, L.P. bankruptcy case [adv. no. 2:13-ap-01855-BB]. He recalls entering into a settlement agreement with the chapter 7 trustee, but he does not remember the exact amount he paid to the trustee.

***F. Specific SPEs and Transactions***

***1. Broadway/Workman, LLC***

Broadway/Workman, LLC (“Broadway”) owned a CVS drugstore-anchored retail property, located at 2625 N. Broadway, Los Angeles, CA 90031. Gerson Fox invested \$680,778.77 in Broadway. According to Defendant, as the economy worsened, cash flow from the Broadway property was used to cover other Kamen/Fox expenses, as directed by Mr. Kamen and Gerson Fox.

According to Mr. Frank, Broadway defaulted on the loan encumbering its real property by, among other things, failing to pay the monthly installments of principal, interest and tax and insurance escrows that became due in January, February and March of 2011, plus late charges, default interest, attorney’s fees, advances, costs and expenses. Broadway’s bank statements for January-March 2011 reflect that, after Merrill deposited rental income into Broadway’s account, transfers were made to Mika or Foxmen that depleted Broadway’s account. According to Mr. Frank, by March 2011, Broadway had defaulted on its January and February 2011 monthly payments to Wells Fargo.

***2. Covina Palms Center, LLC***

Covina Palms Center, LLC (“Covina Palms”), formed in 2007, owned a multi-tenant retail center located at 2211-2249 East Garvey Avenue North, West Covina, California. According to Mr. Garrett, Gerson Fox and the Michael J. Kamen Trust each held a 50% member interest in Covina Palms. Gerson Fox’s total investment in Covina Palms was \$2,122,848.37.

According to Defendant, financing for Covina Palms was provided by FNB Nevada. After FNB Nevada was seized by the FDIC, FH Partners acquired FNB Nevada’s loan to Covina Palms. Eventually, the note was sold to a third party who was brought to FH Partners by Kevin Golshan. At the time, Mr. Golshan had an interest in Covina Palms; Mr. Golshan bought his interest from Gerson Fox, after Gerson Fox instructed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Defendant to raise capital for Gerson Fox by selling an interest in that entity. Mr. Golshan paid \$500,000 for an interest in Covina Palms. The transaction was completed through Commerce Escrow, which then wired \$500,000.00 directly to Gerson Fox's personal Wells Fargo account. Gerson Fox later denied knowledge of the transfer and what the funds were for. Gerson Fox and Mr. Golshan ended up in litigation over this issue.

According to Mr. Garrett, in 2009 and 2010, numerous transfers and withdrawals were made from Covina Palms' bank account. The transactions included transfers to other Mika entities, law firms, and Defendant, and payments for Mr. Kamen's personal expenses. At trial, Mr. Garrett stated that he had not seen copies of any cancelled checks that effectuated these transfers.

Mr. Kamen testified to paying personal expenses from the Covina Palms account. He further testified that he repaid all amounts to Covina Palms, except for a small amount. Mr. Kamen did not tell or obtain approval from Gerson Fox before paying his personal expenses from the Covina Palms account. Mr. Kamen did not remember if he instructed anyone to make the transfers from the Covina Palms account to pay his personal expenses.

**3. *Star News Building, LLC and Star News Building, LP***

Star News Building, LLC, and later Star News Building, LP (together, "Star News") owned a building located 525 E. Colorado Blvd, Pasadena, California, which was the original home to the Pasadena Star-News newspaper. Gerson Fox's investment in Star News Building, LLC was \$2,871,501 and his investment in Star News Building, LP was \$677,268.23. Glabmans Furniture ("Glabmans") was the main first floor tenant of the Star News building.

In 2008, Mika refinanced the existing loan for Star News with an approximately \$10 million loan from Business Partners Credit Union ("Business Partners"). Shortly after the Business Partners loan closed, Glabmans defaulted on its long-term lease.

Additional vacancies occurred in the Star News building, and it became difficult to service the debt for the property. During this period, a potential tenant, the Culinary Institute of America (the "Culinary Institute"), was interested in leasing the entire

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

building. With Mr. Kamen's direct involvement, Mika was able to negotiate a lease for the building, requiring tens of millions in tenant improvements, which the Culinary Institute provided in return for certain lease concessions. These concessions limited the upfront capital Mr. Kamen and Gerson Fox would be required to invest.

With the limited cash flow from the building, Star News consistently required cash from Mr. Kamen and Gerson Fox. Defendant recalls Business Partners was quite aggressive in the pursuit of the Star News property, hoping for a default. During this time, Star News retained Mr. Reeder to litigate the termination of the Glabmans lease. Eventually, the matter went to trial and Star News obtained a \$900,000.00-plus judgment.

After the Culinary Institute entered into its lease, the Culinary Institute completed its build-out, which added value to the property. Money was needed for leasing expenses and the building. Defendant and Mika staff constantly made Mr. Kamen and Gerson Fox aware of the financial situation.

Defendant states that in October 2010, it was critical that a payment be made on the Star News loan from Business Partners. Defendant could not reach Gerson Fox, so Defendant wired approximately \$110,000 of his personal funds to make that payment. If that payment had not been made, a notice of default would have been filed. Defendant's loan was never repaid. Towards the end of 2010, Gerson Fox agreed to lend Star News additional money, which was used to pay property taxes, tenant improvement expenses, and to pay the balance of the leasing commission for the Culinary Institute lease. Gerson Fox recorded a second mortgage on the Star News property evidencing this loan.

**4. *La Vergne Food Lion Partners, LLC***

La Vergne Food Lion Partners, LLC ("La Vergne"), formed in 2007, owned a property located at 5185-5195 Murfreesboro Road, La Vergne, Tennessee. The property, a 47,050 square foot shopping center, was anchored by a Food Lion grocery store.

Gerson Fox received consistent cash flow disbursements from the La Vergne property. Defendant does not recall when the loan was placed into default or the ultimate disposition of the property. According to Mr. Frank, La Vergne defaulted on its loan by, among other things, failing to pay the monthly installments of principal, interest

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

and tax and insurance escrows that became due in January, February and March of 2011, plus late charges, default interest, attorney's fees, advances, costs and expenses.

La Vergne's bank statements for January-March 2011 reflect that, after Merrill deposited rental income into La Vergne's account, transfers from La Vergne's account were made to Mika or Foxmen. According to Mr. Frank, such transfers left La Vergne unable to pay its February 2011 mortgage.

**5. York Square, LLC**

York Square, LLC ("York Square") owned a historic mixed use property containing thirteen loft units and a Union Bank branch. FNB Nevada provided project financing to York Square; FH Partners subsequently acquired FNB Nevada's loan to York Square. According to Defendant, he "begged" Gerson Fox to purchase the York Square loan for approximately 50% of the outstanding loan balance. Plaintiffs assured Defendant they would buy the loan. When they did not do so, Cowboy and Cowboy ("Cowboy") acquired the note.

Defendant further contends that Peter Mehrrian, the principal of Cowboy, approached Defendant and suggested that York Square provide a deed in lieu of foreclosure. Allegedly, an agreement was reached that Cowboy would pay Gerson Fox and Mr. Kamen \$250,000 for cooperation and the deed in lieu. Gerson Fox and Mr. Kamen never received this payment. As the foreclosure date approached, Defendant went to Gerson Fox and Mr. Kamen and advised them to put York Square into bankruptcy.

According to Defendant, Mr. Kamen and Gerson Fox signed a letter granting Defendant authority over York Square. Because Defendant was not able to obtain funds from Mr. Kamen or Gerson Fox to pay legal fees for the bankruptcy case, Defendant personally borrowed the \$50,000 retainer fee that was paid to York Square's bankruptcy counsel. On February 9, 2011, York Square filed a chapter 11 petition, initiating case no. 2:11-bk-15554-BB. Defendant later borrowed an additional \$50,000 for operating costs to fund York Square's property through the bankruptcy.

According to Mr. Garrett, Gerson Fox invested \$1,214,171.82 in York Square, and lost his entire investment. According to Defendant, the York Square bankruptcy allowed Gerson Fox to obtain full ownership of the asset, while Cowboy was forced

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

to carry the mortgage for an extended term. Mr. Kamen also testified that the bankruptcy case of York Square benefitted Gerson Fox. Defendant's advances for York Square were never repaid.

**6. 22 Colt Lane Investors, LLC**

According to Defendant, 22 Colt Lane Investors, LLC ("22 Colt Lane") was an SPE formed to hold title to Defendant's residence. The operating agreement for 22 Colt Lane lists Mr. Kamen and Gerson Fox as members. Defendant testified that he paid the \$4,100 monthly mortgage payments directly to the lender. Gerson Fox guaranteed the debt to the lender.

**G. State Court Litigation**

On October 28, 2011, many of the SPEs sued Defendant and others in the Superior Court of California, alleging numerous causes of action, including fraud, conversion, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty (the "October 2011 Case"). On October 30, 2013, the Superior Court dismissed the October 2011 Case against Defendant, with prejudice.

On April 18, 2013, Gerson Fox and Gertrude Fox (together, "Plaintiffs") sued Defendant and his spouse in Superior Court, asserting fifteen causes of action (the "April 2013 Case"). On July 8, 2014, the state court entered default judgment against Plaintiffs and in favor of Plaintiffs in the April 2013 Case (the "Default Judgment"). On August 26, 2014, Defendant filed a motion to vacate the Default Judgment (the "Motion to Vacate"), which the Superior Court denied on the grounds that it lacked jurisdiction to hear the Motion to Vacate. On May 10, 2018, the California Court of Appeal reversed the Superior Court and remanded the proceeding, directing the Superior Court to rule on the merits of the Motion to Vacate.

**H. Michael Kamen's Bankruptcy Case**

On March 19, 2018, Mr. Kamen filed a voluntary chapter 11 petition, commencing case no. 2:12-bk-19793-BB (the "Kamen Bankruptcy Case"). During the Kamen Bankruptcy Case, the Official Committee of Creditors Holding Unsecured Claims hired Adrian Stern, CPA, and his firm Clumeck Stern, to conduct forensic accounting analysis to determine capitalization, member loans, distributions, and intercompany



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

transfers of the SPEs owned in part by Mr. Kamen and Gerson Fox. Plaintiffs were uncooperative with Mr. Stern's investigation. Plaintiffs produced only a single CD of documents with no valuable information and refused to meet with or be interviewed by Mr. Stern.

Mr. Stern reviewed over 100,000 pages of documents and interviewed many witnesses over a several-month period. After a forensic reconstruction of the books of Broadway (2006-2011), Star News (2006-2011), York Square (2006-2011), La Vergne (2007-2011), Covina Palms (2007-2011), and other SPEs, Mr. Stern found no damages to any of the SPEs or their members, including Gerson Fox. Mr. Stern determined that money from the SPEs had been commingled with the knowledge and authority of Mr. Kamen, Gerson Fox, and Defendant's predecessor at Mika, and that no money was unaccounted for or missing in any of the SPEs. Mr. Stern also determined that Defendant had not taken any money for his own benefit from any of the SPEs. Mr. Stern also noted that Defendant made substantial personal loans to the SPEs that were never repaid. According to Mr. Stern, such loans benefitted the SPEs, Mr. Kamen, and Gerson Fox.

***I. Defendant's Bankruptcy Case***

On February 13, 2015, Defendant filed a voluntary chapter 7 petition, commencing case no. 1:15-bk-10466-VK. On February 23, 2015, Defendant filed his schedules [1:15-bk-10466-VK, doc. 10]. In his Schedule F, Defendant listed an unsecured nonpriority claim for \$7,958,612.00 owed to Gerson Fox, which Defendant indicated stemmed from a lawsuit. Defendant listed the debt as having been incurred on December 9, 2014.

***J. The Adversary Proceeding***

On May 15, 2015, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them under 11 U.S.C. §§ 523(a)(4) and (a)(6), commencing the pending adversary proceeding. On July 27, 2015, Plaintiffs filed a first amended complaint (the "FAC") [doc. 12], which is the operative complaint, and added claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B).

On January 17, 2017, Defendant filed a motion to compel Plaintiffs' appearance at their depositions ("Motion to Compel") [doc. 60]. On March 10, 2017, the Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

entered an order regarding the Motion to Compel, mandating Plaintiffs' appearance at depositions and awarding Defendant sanctions in the amount of \$2,500 [doc. 68]. On April 20, 2017, after Plaintiffs did not comply with this order, the Court entered another order, barring Plaintiffs from testifying at trial or providing any testimony in connection with pretrial motions [doc. 77].

On February 5, 2018, the parties filed their joint pretrial stipulation [doc. 145]. On May 29-June 1, and June 4, the Court held trial in this matter. For the reasons set forth below, Plaintiffs did not meet their burden of demonstrating that any debt owed to them is nondischargeable under 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(B), (a)(4), or (a)(6).

## **II. LEGAL STANDARD**

### ***A. Burden of Proof***

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523(a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir. B.A.P. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

### ***B. 11 U.S.C. § 523(a)(A)***

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, Plaintiffs must prove by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000).

***1. False Representation, Fraudulent Omission, or Deceptive Conduct***

“‘False representation’ refers to express misrepresentations, either oral or written.” *Dancor Constr., Inc. v. Haskell (In re Haskell)*, 475 B.R. 911, 920 (Bankr. C.D. Ill. 2012), *adhered to on reconsideration*, Case No. 11-80231, 2012 WL 4754673 (Bankr. C.D. Ill. Oct. 4, 2012).

“[S]ilence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under § 523(a)(2)(A).” *In re Evans*, 181 B.R. 508, 514 (Bankr. S.D. Cal. 1995). “Under common law, a false representation can be established by an omission when there is a duty to disclose.” *In re Eashai*, 87 F.3d 1082, 1082 (9th Cir. 1996). “[A] party to a business transaction has a duty to disclose when the other party is ignorant of material facts which he does not have an opportunity to discover.” *Apte v. Japra (In re Apte)*, 96 F.3d 1319, 1324 (9th Cir. 1996). “[T]he plaintiff must establish that the debtor concealed facts and that the facts concealed were material. Concealed facts are material if ‘a reasonable man would attach importance to the alleged omission in determining his course of action.’” *Evans*, 181 B.R. at 515 (quoting *Titan Group, Inc. v. Faggen*, 513 F.2d 234, 239 (2d Cir. 1975)).

“[A] false pretense refers to an implied misrepresentation of ‘conduct intended to create and foster a false impression.’” *Shannon v. Russell (In re Russell)*, 203 B.R. 303, 312 (Bankr. S.D. Cal. 1996).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

**2. Knowledge of Falsity and Intent to Deceive**

[A] misrepresentation is fraudulent if the maker (a) knows or believes that the matter is not as he represents it to be, (b) does not have the confidence in the accuracy of his representation that he states or implies, or (c) knows that he does not have the basis for his representation that he states or implies.

*Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 168 (B.A.P. 9th Cir. 1999). “[Section] 523(a)(2)(A) requires that the debtor actually intend to defraud the creditor and that the debt arise as a result of the fraud.” *Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa)*, 258 B.R. 192, 198 (B.A.P. 9th Cir. 2001).

Because intent is difficult to prove through direct evidence, it “may be established by circumstantial evidence, or by inferences drawn from a course of conduct. Therefore, in determining whether the debtor had no intention to perform, a court may look to all the surrounding facts and circumstances.” *In re Barrack*, 217 B.R. 598, 607 (B.A.P. 9th Cir. 1998) (internal quotations omitted). A court may infer intent to deceive from a false representation. *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989); *see also Eashai*, 87 F.3d at 1087 (“a court may infer the existence of the debtor’s intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor”); and *Gertsch*, 237 B.R. at 167–68 (“intent to deceive can be inferred from the totality of the circumstances, including reckless disregard for the truth”).

**C. 11 U.S.C. § 523(a)(2)(B)**

Pursuant to 11 U.S.C. § 523(a)(2)(B), a discharge under section 727 of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

use of a statement *in writing*—

- (i) that is materially false;
- (ii) respecting the debtor’s or an insider’s financial condition;
- (iii) on which the creditor to whom the debtor is liable for such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive.

“The Ninth Circuit has reworded these requirements as follows: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor’s reliance was reasonable, and (7) that damage proximately resulted from the representation.” *In re Cacciatori*, 465 B.R. 545, 551 (Bankr. C.D. Cal. 2012) (citing to *Candland v. Ins. Co. of N. Am.*, 90 F.3d 1466, 1469 (9th Cir.1996)).

**D. 11 U.S.C. § 523(a)(4)**

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

***1. Defalcation***

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

***a. Existence of Trust/Fiduciary Relationship***

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (9th Cir. B.A.P. 2001). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit Court of Appeals has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (9th Cir. B.A.P. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 n.6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.* at n.7 (quoting *Royal Indem. Co. v. Sherman*, 269 P.2d 123, 125 (1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

**b. Fraud/Defalcation**

Under § 523(a)(4), fraud refers to actual fraud. *Honkanen*, 446 B.R. at 382 (citing *In re Roussos*, 251 B.R. 86, 91 (9th Cir. B.A.P. 2000)). This involves the "conscious misrepresentation, or concealment, or non-disclosure of a material fact which induces the innocent party to enter into a contract." *Id.* at 383. The elements of actual fraud include the following:

- (1) defendant made a misrepresentation, concealment, or non-disclosure of a material fact;
- (2) defendant had knowledge that what he was saying was false;
- (3) defendant intended to induce plaintiff's reliance;
- (4) plaintiff justifiably relied; and
- (5) plaintiff suffered damage as a result.

*Id.* Under § 523(a)(4), debts related to "defalcation while acting in a fiduciary capacity," are nondischargeable. "Defalcation is defined as 'misappropriation of trust funds or money held in any fiduciary capacity.'" *In re Lewis*, 97 F.3d 1182, 1187 (9th

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca  
Cir. 1996).

Chapter 7

**2. Embezzlement**

"Federal law and not state law controls the definition of embezzlement for purposes of section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (9th Cir. B.A.P. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). For purposes of embezzlement, a fiduciary relationship is not required. *Id.* at 555.

**E. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145-46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

(3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

**F. Aiding and Abetting Breach of Fiduciary Duty**

Liability may . . . be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person. . . . Unlike a conspirator, an aider and abettor need not be capable of the target tort. . . . To plead aiding and abetting by a defendant, the plaintiff must allege that the defendant had actual knowledge of the "specific primary wrong" being committed, and gave substantial assistance to the wrongful conduct.

*Goonewardene v. ADP, LLC*, 5 Cal. App. 5th 154, 188 (Cal. Ct. App. 2016), as modified on denial of reh'g (Nov. 29, 2016) (internal quotations and citations omitted).

To prove a claim for aiding and abetting a tortious act, a plaintiff must show that the alleged aider and abettor made "a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act." *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451, 1477 (2014), as modified (May 27, 2014) (citing *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.*, 131 Cal. App. 4th 802, 823, fn. 10 (2005)).

**III. DISCUSSION**

**A. 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B)**

Plaintiffs have not met their burden of proof under 11 U.S.C. §§ 523(a)(2)(A) or (a)(2)(B). Plaintiffs did not introduce admissible evidence as to any element of their § 523(a)(2)(A) claim. Plaintiffs did not introduce evidence that Defendant made any misrepresentation; that Defendant had knowledge of the falsity of any



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

misrepresentation; that Defendant intended to deceive; that Plaintiffs justifiably relied on any misrepresentation that the Defendant made; or that Plaintiffs suffered damage proximately caused by their reliance on a statement Defendant made.

Moreover, Plaintiffs did not introduce admissible evidence as to any element of their § 523(a)(2)(B) claim. Plaintiffs did not introduce evidence that Defendant made any written misrepresentation; that such written representation was material; that Defendant had knowledge of the falsity of the written misrepresentation; that Defendant intended to deceive; that the Plaintiffs justifiably relied on any written misrepresentation that the Defendant made; or that Plaintiffs suffered damage proximately caused by their reliance on a written representation that Defendant made.

The FAC contains numerous allegations regarding Defendant's conduct as COO, and later CEO, of Mika between 2006 and 2011. Such allegations include the unauthorized transfers of funds between SPEs, unauthorized use of SPE funds to pay personal expenses, and the forging of documents.

At trial, Plaintiffs did not establish that Defendant made any misrepresentation to Plaintiffs. Gerson Fox was an especially active participant in the business affairs of Mika and the SPEs. As Defendant testified, Gerson Fox was involved in numerous meetings at Mika, and Defendant would copy him on nearly every important Mika and SPE-related email. As for the transfers of funds between SPEs, the evidence shows that Mr. Kamen and Gerson Fox authorized such transfers in a effort to save the SPEs. Mr. Reeder had advised against such transfers, but he was overruled by Mr. Kamen and Gerson Fox. Mr. Kamen and Gerson Fox explicitly authorized Defendant to make such transfers, and Defendant complied. Because Gerson Fox had knowledge of, and had authorized, such transfers, Plaintiffs have not demonstrated that Defendant made any misrepresentation or had any intent to deceive Gerson Fox with respect to these inter-SPE transfers.

Plaintiffs also allege that Defendant made numerous unauthorized transfers from Covina Palms' bank account without Gerson Fox's approval. At trial, Mr. Kamen testified that he freely used the Covina Palms bank account to pay personal expenses, but later paid back all but a small amount. Mr. Kamen did not seek approval from Gerson Fox before doing so. Mr. Kamen also did not recall whether he authorized any other individual to make such personal expense payments from the Covina Palms account on his behalf. Plaintiffs did not present evidence that Defendant made such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

transfers on Mr. Kamen's behalf. Although there is evidence of \$14,200 transferred from the Covina Palms account to Defendant between October 1 and November 5, 2010, Plaintiffs did not present any evidence that such transfers were made by Defendant, or that such transfers were not authorized.

Plaintiffs further allege that Defendant was involved in a scheme to help Kevin Golshan evade capital gains taxes by secretly selling an interest in Covina Palms. However, based on the evidence before the Court, Gerson Fox directed Defendant to raise capital by selling an interest in Covina Palms. None of the evidence Plaintiffs presented at trial established any misrepresentation by Defendant with respect to this transaction, or to any other transaction involving Covina Palms or the property it owned.

Furthermore, Plaintiffs did not establish that Defendant forged any documents with respect to Covina Palms or any other SPE. Plaintiffs did not present any evidence or expert testimony regarding any such alleged forged documents. As for 22 Colt Lane, that SPE appeared to be created with the full knowledge of Mr. Kamen and Gerson Fox, who were the only members of the SPE and whose signatures appear on the operating agreement. Defendant denied creating any guaranty relating to 22 Colt Lane, and testified that Gerson Fox signed such guarantee on his own behalf.

Even if Plaintiffs could establish that Defendant made any misrepresentation, Plaintiffs cannot establish that Defendant had intent to deceive Plaintiffs. The evidence shows that Defendant's transfers between SPEs were authorized by Mr. Kamen and Gerson Fox. Defendant also testified that he placed York Square into bankruptcy to save the entity, and he personally borrowed the funds to do so.

***B. 11 U.S.C. § 523(a)(4)***

***1. Defalcation***

Plaintiffs have not met their burden of proof under § 523(a)(4) as to whether Defendant committed fraud or defalcation while acting in a fiduciary capacity.

***a. Existence of Trust/Fiduciary Relationship***

Plaintiffs argue that Defendant's role as an agent of Plaintiffs gave rise to a fiduciary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

relationship under California law. However, "[t]he broad definition of fiduciary under nonbankruptcy law—a relationship involving trust, confidence, and good faith—is inapplicable in the dischargeability context." *In re Honkanen*, 446 B.R. 373, 378 (9th Cir. B.A.P. 2011). The fiduciary relationship required by § 523(a)(4) is much narrower. Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale*, 780 F.2d at 795. Such fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Id.* at 796. Although federal law governs whether a relationship is a fiduciary one under § 523(a)(4), courts also consider state law to determine whether the requisite trust relationship exists. *Honkanen*, 446 B.R. at 379.

Plaintiffs argue that a corporate officer can be held individually liable for a breach of fiduciary duty by the corporation. In support of their position, Plaintiffs cite several cases: *Capitol Indem. Corp. v. Interstate Agency, Inc. (In re Interstate Agency, Inc.)*, 760 F.2d 121 (6th Cir. 1985); *Woodworking Enters., Inc. v. Baird (In re Baird)*, 114 B.R. 198 (9th Cir. B.A.P. 1990); *KGB Int'l, Inc. v. Watford (In re Watford)*, 374 B.R. 184 (Bankr. M.D.N.C. 2007); *Fowler & Peth, Inc. v. Regan (In re Regan)*, 311 B.R. 271 (Bankr. D. Colo. 2004), *rev'd and remanded*, 326 B.R. 175 (D. Colo. 2005), *rev'd*, 477 F.3d 1209 (10th Cir. 2007), *and aff'd*, No. CIV.04-CV-01483LTB, 2007 WL 1346576 (D. Colo. May 4, 2007); *Global Express Money Orders, Inc. v. Davis (In re Davis)*, 262 B.R. 673 (Bankr. E.D. Va. 2001); *Anderson v. Currin (In re Currin)*, 55 B.R. 928 (Bankr. D. Colo. 1985); and *Sun Life Ins. Co. of Am. v. Koszuth (Matter of Koszuth)*, 43 B.R. 104 (Bankr. M.D. Fla. 1984). [FN2]

All of Plaintiffs' cases are distinguishable. The courts in the following cases found the existence of a fiduciary relationship, based on an express trust pursuant to state or federal law

Case	Type of Trust
<i>Interstate Agency</i>	Express, statutory trust under Michigan law
<i>Baird</i>	Express, statutory trust under Arizona law
<i>Watford</i>	Express, statutory trust under the federal Perishable Agricultural Commodities Act, 7 U.S.C. § 499a <i>et seq.</i>
<i>Regan</i>	Express, statutory trust under Colorado law
<i>Davis</i>	Express trust agreement under Maryland law
<i>Currin</i>	Express, statutory trust under Colorado law

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

In *Koszuth*, the defendant was the officer of an entity that serviced certain insurance policies written by plaintiff, an insurance provider. The servicing entity and plaintiff had entered into an agreement, under which all monies collected by the servicing entity were to be held in a fiduciary trust account and in a fiduciary capacity. The defendant signed the agreement as the president of the servicing entity. Subsequently, the servicing entity violated the agreement by not remitting all funds to plaintiff, and instead used such monies to cover its own operating expenses. The defendant filed a chapter 7 petition. Plaintiff filed an adversary proceeding, seeking a nondischargeability determination under § 523(a)(4) against the defendant individually. The defendant filed a motion for judgment on the pleadings, or in the alternative, summary judgment, arguing in part that he never had a personal fiduciary duty to plaintiff. The bankruptcy court denied defendant's motion, holding that "a fiduciary relation may exist between the corporate officers and the creditors in the presence of a contractual agreement establishing a trust relationship with the corporation." *Koszuth*, 43 B.R. at 108.

Here, Plaintiffs have produced no evidence that Defendant's employment with Mika gave rise to an express or technical trust under California or federal law. Plaintiffs have not identified any express trust agreement entered into by Defendant, or any statute that establishes a fiduciary relationship between Plaintiffs and Defendant. Nor have Plaintiffs presented evidence that any of the SPE agreements contained provisions that establish a fiduciary relationship between the SPEs and Plaintiffs, similar to the agreement in *Koszuth*.

***b. Fraud/Defalcation***

Even assuming the existence of a fiduciary relationship between Plaintiffs and Defendant, Plaintiffs' fraud allegations similarly do not suffice to state a claim for relief under § 523(a)(4) for fraud. As noted above, Plaintiffs have not established that Defendant made any specific misrepresentation to Plaintiffs regarding his actions as COO and CEO of Mika.

Moreover, to state a claim for defalcation under § 523(a)(4), a plaintiff must prove the misappropriation of funds or money held in trust by a fiduciary. Because Plaintiffs have not established that Defendant is a fiduciary for purposes of § 523(a)(4),

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, August 22, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

Plaintiffs cannot establish that Defendant engaged in defalcation.

**2. *Embezzlement***

Plaintiffs have not met their burden of proof under § 523(a)(4) as to whether Defendant committed embezzlement. Plaintiffs have not established that their property was rightfully in the possession of Defendant. Under the property management agreements between Mika and each of the SPEs, Mika had full authorization to withdraw funds from the SPEs' bank accounts at Mika's sole discretion. Defendant also had the authority to withdraw such funds. However, such funds were deposited into the SPEs' respective bank accounts and were in the possession of the SPEs. Plaintiffs have not established that they entrusted funds *directly* to Defendant's possession.

Even if such funds were in Defendant's possession, Plaintiffs have not established that Defendant misappropriated Plaintiffs' property to a use other than that for which it was entrusted. Plaintiffs also have not identified that Defendant specifically made any of the alleged improper transfers. As noted above, many individuals, including Mr. Kamen, could have made transfers between the SPEs. At trial, Defendant, Mr. Kamen, and Mr. Reeder all testified that Mr. Kamen and Gerson Fox directed Defendant to transfer funds between SPEs, in an attempt to save the various properties at issue. Because Defendant made such transfers at the behest of Mr. Kamen and Gerson Fox, such transfers do not constitute misappropriation of Plaintiffs' property under § 523(a)(4).

**C. *11 U.S.C. § 523(a)(6)***

Plaintiffs have not met their burden of proof under § 523(a)(6). In the FAC, Plaintiffs allege that Defendant's debt is nondischargeable pursuant to § 523(a)(6). Plaintiffs introduced no evidence at trial that Defendant acted either willfully and/or maliciously. Plaintiffs also have not identified that Defendant specifically made any of the alleged improper transfers. Nor have Plaintiffs introduced any evidence that Defendant inflicted any injury.

As noted above, Plaintiffs have not established that Defendant acted with any intent to injure Plaintiffs or their property while acting in his capacity as COO and CEO of Mika. Defendant was directed by Mr. Kamen and Gerson Fox to make inter-SPE

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

transfers to help save the SPEs. As for Covina Palms, the evidence shows that Gerson Fox instructed Defendant to sell an interest in Covina Palms to raise money. Defendant testified that his actions with respect to York Square, including placing York Square into bankruptcy, were intended to save the company, not to defraud Gerson Fox.

***D. Aiding and Abetting Breach of Fiduciary Duty***

In their trial brief, Plaintiffs ask that if the Court finds that Defendant owed no fiduciary duty directly to Plaintiffs, the Court should find Defendant liable for aiding and abetting Mika's breach of fiduciary duty. However, Plaintiffs did not plead this claim for relief in the FAC or address it in the joint pretrial stipulation.

In any event, Mika is not a party to the present action. Plaintiffs did not establish that Mika owed any fiduciary duty directly to Plaintiffs, or that Mika breached any fiduciary duty. Thus, Plaintiffs have not established that Defendant aided or abetted any breach of fiduciary duty.

**IV. CONCLUSION**

Pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6), the Court will enter judgment in favor of Defendant.

Defendant must submit a proposed judgment within seven (7) days.

**FOOTNOTES**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. Unless this decision cites a pleading from these dockets, or an exhibit, the facts are derived from the trial declarations and other testimony provided at trial.
2. All of Plaintiffs' cited cases were decided before the United State Supreme Court's decision in *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013). In *Bullock*, the Supreme Court held that the term "defalcation," as used in 11 U.S.C. § 523(a)(4), includes a culpable state of mind involving knowledge of, or gross recklessness with respect to, the improper nature of acts that violate fiduciary duties. *Id.* at 273–74.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, August 22, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau

**Defendant(s):**

Ernest Charles Barreca

Pro Se

**Plaintiff(s):**

Gerson Fox

Represented By  
David B Golubchik

Gertrude Fox

Represented By  
David B Golubchik

**Trustee(s):**

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#0.00** Status conference re chapter 11 case

fr. 7/5/18; 7/26/18, 8/9/18

Docket 1

**Tentative Ruling:**

**8/9/2018 Tentative:**

What is the status of the settlement agreement (among the chapter 7 trustee, the class action plaintiffs and the debtor) and the motion for conditional dismissal?

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11318 Marcin Lambirth LLP**

**Chapter 7**

**#1.00** Status conference re: Chapter 7 Involuntary petition

fr. 7/19/18

Docket 1

**Tentative Ruling:**

The Court will enter an order for relief.

**I. BACKGROUND**

***A. The Alleged Debtor***

On May 22, 2018, Tim Lambirth, Kristy Jones and Timothy Lambirth APC (the "APC") and, together with Mr. Lambirth and Ms. Jones, "Petitioning Creditors") filed an involuntary chapter 7 petition against Marcin Lambirth, LLP (the "Alleged Debtor"). According to Petitioning Creditors, the APC and John B. Marcin were partners of the Alleged Debtor until 2014, when the APC gave notice to Mr. Marcin that it was withdrawing as a partner of the Alleged Debtor. Status Report [doc. 7], ¶¶ 3-4. On October 18, 2017, the Alleged Debtor was placed on involuntary termination for failing to maintain at least two partners. Parrott Objection [doc. 8], Exhibit D.

Petitioning Creditors contend that, after the APC's withdrawal, Mr. Marcin continued to operate the Alleged Debtor as "Marcin Lambirth LLP," but eventually operated the practice under the name "Marcin LLP." Status Report, ¶ 4. According to Mr. Marcin's profile on the California State Bar's website, of which this Court will take judicial notice, on July 3, 2018, Mr. Marcin's license to practice law in California was suspended.

***B. Service of the Summons and Involuntary Petition***

According to Petitioning Creditors, the Alleged Debtor was located at 16830 Ventura Boulevard, Suite 320, Encino, California 91436 (the "Encino Address") from May 2008 until October 2014 and at 5567 Reseda Boulevard, Suite 320, Tarzana,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

California 91356 (the "Tarzana Address") from October 2014 until an unknown date. Status Report, ¶ 2. Certificates of Registration filed with the State Bar of California on behalf of the Alleged Debtor also reflect that the Alleged Debtor was located at the Encino Address from 2011 until 2014 and at the Tarzana Address from 2015 until at least 2016. Miller Objection [doc. 9], Exhibit 125. In addition, Mr. Marcin's profile on the California State Bar website indicates that the Alleged Debtor's address is the Tarzana Address. A February 2017 filing of a Notice of Lien by Marcin LLP reflects that Mr. Marcin operated his law firm at the Tarzana Address. Status Report, Exhibit 1.

On May 24, 2018, Petitioning Creditors served the summons and the involuntary petition on the Alleged Debtor by mailing via United States mail, first class and postage prepaid, a copy of the summons, notice of involuntary bankruptcy case and the involuntary petition to the Encino Address and the Tarzana Address. Declaration of Marvin Ramos ("Ramos Declaration") [doc. 6], p. 2. Using the same method, Petitioning Creditors also served Mr. Marcin, as the agent for service of process, at the Tarzana Address, the Encino Address and a third address, at 10868 Crebs Avenue, Porter Ranch, California 91326. Ramos Declaration, p. 2.

Despite serving the Alleged Debtor and Mr. Marcin at multiple addresses, the Alleged Debtor has not timely responded to the involuntary petition or otherwise appeared. In the Status Report, Petitioning Creditors noted that the mailings to the Alleged Debtor and Mr. Marcin were returned as undeliverable. Status Report, ¶ 9. According to Petitioning Creditors, Mr. Lambirth recently hired a private investigator to locate Mr. Marcin, but the private investigator was unsuccessful. Reply [doc. 10], p. 7.

***C. Potential Asset of the Alleged Debtor***

According to Petitioning Creditors, prior to the APC's withdrawal from the Alleged Debtor, the Alleged Debtor represented the plaintiff in an action entitled *Oswaldo Ureta, et al, Plaintiffs v. County of Los Angeles, et al, Defendants*, Los Angeles Superior Court Case No. BC501051 (the "Ureta Action"). Status Report, ¶ 5. Petitioning Creditors contend that trial in the Ureta Action is set for early next year and, depending on the outcome, the Alleged Debtor could receive a significant payment for legal fees and costs earned during its representation of the plaintiffs. *Id.* Petitioning Creditors note that, upon entry of an order for relief, the chapter 7 trustee

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

may collect these fees and costs on behalf of the estate for distribution to creditors.

***D. Creditors of the Alleged Debtor***

Aside from the three Petitioning Creditors, there are at least five other creditors of the Alleged Debtor. On August 2, 2018, creditors Nancy Lee Ann Parrott, individually and as the successor trustee of the Parrott Family Trust Dated February 28, 2011, and Juanita Cohodas (together, the "Parrott Creditors") filed an objection to the entry of an order for relief (the "Parrott Objection") [doc. 8]. In the Parrott Objection, the Parrott Creditors state that they are plaintiffs in an action against the Alleged Debtor based on legal malpractice, breach of fiduciary duty and elder abuse.

On the same day, creditors Lisa Miller and Debbie Vaughn (together, the "Miller Creditors") filed an objection to the entry of an order for relief (the "Miller Objection") [doc. 9]. The Miller Creditors also are plaintiffs in an action against the Alleged Debtor, among others.

As for Petitioning Creditors, Petitioning Creditors indicate in the involuntary petition that: (A) Mr. Lambirth has a claim of \$102,000 against the Alleged Debtor arising from the use of Mr. Lambirth's name; (B) Ms. Jones has a claim of \$1,827 against the Alleged Debtor arising from unpaid employee compensation; and (C) the APC has a claim of \$250,000 against the Alleged Debtor arising from the APC's interest in a lawsuit.

***E. The Pleadings***

In the Parrott Objection, the Parrott Creditors: (A) object to the service of the summons and involuntary petition, and request service by publication; (B) assert that the Alleged Debtor is not qualified to be a debtor in bankruptcy because the Alleged Debtor is dissolved; (C) argue that the claim asserted by Mr. Lambirth is actually a claim in favor of the APC; and (D) request abstention or dismissal under 11 U.S.C. § 305(a).

In the Miller Objection, the Miller Creditors: (A) assert that the Court does not have personal jurisdiction over the Alleged Debtor; (B) argue that the APC's claims are contingent; (C) and request dismissal on the basis that the involuntary petition was

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**      **Marcin Lambirth LLP**  
filed in bad faith.

**Chapter 7**

On August 9, 2018, Petitioning Creditors filed an omnibus reply to the Parrott Objection and the Miller Objection (the "Reply") [doc. 10]. In the Reply, Petitioning Creditors assert that service was proper under Federal Rule of Bankruptcy Procedure ("FRBP") 1010(a) and 7004(b)(3). Petitioning Creditors also assert that the Parrott Creditors and the Miller Creditors do not have standing to oppose entry of an order for relief.

## **II. ANALYSIS**

### ***A. Standing***

Pursuant to 11 U.S.C. § 303(d), "[t]he debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section." Under FRBP 1011(a), "[t]he debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition." Moreover, under FRBP 1011(e), "[n]o other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service." (emphasis added).

Multiple cases have held that, in light of 11 U.S.C. § 303(d), only the alleged debtor has standing to object to entry of an order for relief. *See, e.g. In re MarketXT Holdings Corp.*, 347 B.R. 156, 160 (Bankr. S.D.N.Y. 2006) (holding that creditors lack standing to object to entry of an order for relief even where creditors' objection is based on bankruptcy court lacking subject matter jurisdiction over case); *In re Houston Reg'l Sports Network, L.P.*, 505 B.R. 468, 476 (Bankr. S.D. Tex. 2014) ("Although the [creditors] seek to contest the involuntary petition filed against the Network, only the alleged debtor or its general partner may contest an involuntary petition. Accordingly, creditors lack standing to contest an involuntary petition."); and *In re Zenga*, 562 B.R. 341, 348 n.2 (B.A.P. 6th Cir. 2017) (aggregating cases).

Creditors' lack of standing extends to challenges to the qualifications of petitioning creditors. *In re Zais Inv. Grade Ltd. VII*, 455 B.R. 839, 946 Bankr. D.N. J. 2011) ("Only the alleged debtor may contest an involuntary petition, including challenging

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

the qualifications of the petitioning creditors. Here, [the debtor] failed to contest the petition and the order for relief was entered by default. Movants may not question the petitioning creditors' qualifications.").

Although there are no in-circuit cases exactly on point, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has cited approvingly to cases holding that creditors do not have standing under 11 U.S.C. § 303(d):

Such considerations make it unlikely that Congress intended the reading of Section 303(i) suggested by Non-Petitioning Creditors. *See In re New Era Co.*, 115 B.R. 41, 44–45 (Bankr. S.D.N.Y. 1990) (reason why § 303(d) does not give creditors standing to contest involuntary petition is that permitting creditors to contest petitions would enable them to "protect a preference or gain some unfair advantage at the expense of other creditors"), *aff'd*, 125 B.R. 725 (S.D.N.Y. 1991); *Highlander, Inc. v. Rothman*, 459 F.2d 554, 556 (9th Cir. 1972) (same, under predecessor statute to § 303(d), quoting legislative history).

*In re Mike Hammer Prods., Inc.*, 294 B.R. 752, 754–55 (B.A.P. 9th Cir. 2003); *see also In re Valdez*, 1999 WL 33495189, at \*2 (Bankr. D. Or. Mar. 29, 1999), *aff'd*, 250 B.R. 386 (D. Or. 1999) (noting that § 303(d) "suggests that creditors have no standing to answer or controvert a petition under Code § 303" in the context of deciding whether to dismiss a case after entry of an order for relief).

As noted by the Court in *New Era*, to which the BAP cited in *Mike Hammer*, the policy reason for prohibiting creditors from opposing entry of an order for relief "is because a creditor may have an incentive to protect a preference or to gain some unfair advantage at the expense of other creditors, contrary to the policy of requiring an equitable distribution of the debtor's assets among all creditors." *New Era*, 115 B.R. at 46 (citing, *inter alia*, *Highlander*, 459 F.2d at 556); *see also In re QDN, LLC*, 363 F.App'x 873, 876 (3d Cir. 2010) ("Congress chose to preclude creditors from opposing involuntary petitions because such opposition invariably was to protect a preference or to gain some unfair advantage at the expense of other creditors....").

Under 11 U.S.C. § 303(h), if the Alleged Debtor does not timely object, "the court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

*shall* order relief against the debtor in an involuntary case under the chapter under which the petition was filed." (emphasis added); *see also In re HealthTrio, Inc.*, 653 F.3d 1154, 1157 (10th Cir. 2011) ("If the involuntary 'petition is not timely controverted,' the court *must* issue an order for relief....") (emphasis added).

Based on the foregoing, the Parrott Creditors and the Miller Creditors do not have standing to oppose entry of an order for relief in this case. As specified by *Zais Investment*, 455 B.R. at 946, this includes a lack of standing to dispute Mr. Lambirth's or the APC's qualifications as Petitioning Creditors. Even if this issue were properly before the Court, neither the Parrott Creditors nor the Miller Creditors has provided evidence showing that Petitioning Creditors do not have qualifying claims under 11 U.S.C. § 303. The Parrott Creditors suggest that Mr. Lambirth's claim is held by the APC, not Mr. Lambirth. The Parrott Creditors rely on a partnership agreement between Mr. Marcin and the APC (the "Partnership Agreement") attached to a letter sent by Mr. Lambirth to Lee Ackerman. Parrott Objection, Declaration of Lee B. Ackerman (the "Ackerman Declaration"), ¶ 5, Exhibit B.

Notwithstanding the fact that Mr. Ackerman has not explained how he has sufficient personal knowledge to authenticate the Partnership Agreement, the Partnership Agreement does not establish that Mr. Lambirth does not have an individual claim. The relevant provision of the Partnership Agreement states that: "Lambirth will be entitled to a gross payment of \$3,000.00 a month for the use of his name, and all case referrals to the partnership, and for his management and advice and other contributions (payable to [the APC])...." Partnership Agreement, ¶ 4. In the Partnership Agreement, "Lambirth" is defined as "Timothy A. Lambirth." Partnership Agreement, ¶ 3.a. Although the Partnership Agreement indicates that the \$3,000.00 monthly payments are *payable* to the APC, the Partnership Agreement provides that Mr. Lambirth, the individual, is the party "entitled to" the payments. As such, even if the Court were to consider the Partnership Agreement, the Partnership Agreement does not demonstrate that Mr. Lambirth is not entitled to an individual claim against the estate.

As for the Miller Creditors, the Miller Creditors refer to language in the Status Report wherein Petitioning Creditors noted that the Alleged Debtor could receive a significant payment of legal fees and costs from a pending lawsuit. The Miller Creditors argue that, in light of this language, the claim asserted by the APC is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

contingent and, as a result, the APC does not qualify as a petitioning creditor under 11 U.S.C. § 303(b)(1). However, the language in the Status Report refers to a claim held by *the estate*, not by the APC. In the involuntary petition, the APC indicated that its claim against the estate is based on an interest in a lawsuit; the APC did not specify which lawsuit, and the Miller Creditors have not adequately demonstrated that the APC's claim against the estate is contingent. Consequently, even if the objecting creditors had standing, which they do not, there is no evidence that Petitioning Creditors do not qualify as petitioning creditors under 11 U.S.C. § 303(b).

***B. Service***

Although the Parrott Creditors and the Miller Creditors do not have standing to dispute service, Petitioning Creditors properly served the Alleged Debtor by mailing a copy of the summons and the involuntary petition at its registered address, as well as the addresses for the Alleged Debtor's agent for service of process. This method of service complies with FRBP 1010(a) and 7004(b)(3).

The Parrott Creditors assert that service was deficient because “[n]o effort was made to try to physically locate Mr. Marcin.” Parrott Objection, p. 4. However, the Federal Rules of Bankruptcy Procedure do not require any such effort, and the Parrott Creditors have not cited authority requiring attempts to personally locate a principal of an alleged debtor. Parties are, however, required to “make diligent efforts to locate a defendant.” *In re Moreno*, 2012 WL 5614089, at \*4 (Bankr. D.N.M. Nov. 15, 2014). At this time, Petitioning Creditors have attempted service on the Alleged Debtor at three different addresses. In addition, Petitioning Creditors note in the Reply that they hired a private investigator to attempt to locate Mr. Marcin, but their efforts were unsuccessful. Thus, Petitioning Creditors have diligently attempted to serve the Alleged Debtor.

The Miller Creditors contend that this Court does not have personal jurisdiction over the Alleged Debtor. First, the allegations in support of the Miller Creditors' argument that this Court cannot exercise jurisdiction over the Alleged Debtor are not supported by admissible evidence; the Miller Creditors did not support the Miller Objection with a declaration. On the other hand, the involuntary petition states, *under penalty of perjury*, that “[o]ver the last 180 days before the filing of this bankruptcy, the debtor had a domicile, principal place of business, or principal assets in this district longer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

than in any other district.” Involuntary Petition, p. 2.

Next, the Miller Creditors suggest that this Court does not have personal jurisdiction because Petitioning Creditors’ service of the summons and the involuntary petition did not provide sufficient notice of this case to the Alleged Debtor. The Miller Creditors rely on *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 657-58, 94 L.Ed. 865 (1950). In *Mullane*, the Supreme Court of the United States held that “[t]he reasonableness and hence the constitutional validity of any chosen method [of service] may be defended on the ground that it is in itself reasonable certain to inform those affected, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.” *Mullane*, 339 U.S. at 315. “The standard for what amounts to constitutionally adequate notice, however, is fairly low; it’s ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.’” *Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1202 (9th Cir. 2008), *aff’d*, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010) (citing *Mullane*, 339 U.S. at 314).

Pursuant to FRBP 7004(f)—

If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

Under FRBP 7004(f), this Court has personal jurisdiction if three elements are met:

(1) service of process has been made in accordance with [FRBP] 7004 or Civil Rule 4; (2) the court has subject matter jurisdiction under section 1334 of the Code; and (3) exercise of jurisdiction is consistent with the Constitution and laws of the United States.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

*In re Marciano*, 459 B.R. 27, 37 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013) (citing 10 COLLIER ON BANKRUPTCY ¶ 7004.07 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010)).

Here, Petitioning Creditors served the Alleged Debtor at multiple known addresses of the Alleged Debtor and agents for service of process on behalf of the Alleged Debtor in accordance with FRBP 7004(b)(3). As such, the first element is met. Second, neither the Miller Creditors nor the Parrott Creditors contend that this Court does not have subject matter jurisdiction over this involuntary petition. Finally, to the extent the Miller Creditors' argument under *Mullane* suggests that this Court's exercise of jurisdiction would be inconsistent with the Constitution or the laws of the United States, Petitioning Creditors' service of the summons and the involuntary petition complies with the mandates of *Mullane*; the Miller Creditors have not shown how Petitioning Creditors' form of notice is less likely to provide notice to the Alleged Debtor as compared to other forms of notice.

The objecting creditors suggest service by publication as an alternative method of service. However, the objecting creditors have not articulated why service by publication would effectively provide notice to a dissolved entity or to Mr. Marcin, an individual who a private investigator could not locate and whose location is unknown. Petitioning Creditors properly served the Alleged Debtor and Mr. Marcin at their last known addresses. The objecting creditors have not set forth an alternative form of service that is reasonably more likely to provide notice to the Alleged Debtor.

***C. Dissolved Entities***

In the Parrott Objection, the Parrott Creditors suggest that the Alleged Debtor may not be qualified to be the subject of an involuntary petition because the limited liability partnership was terminated. The Parrott Creditors cite State Bar Rule 3.179(A), which states—

The State Bar must terminate certification of a limited liability partnership if there is only one partner in the limited liability partnership or it is notified that the limited liability partnership has been suspended by the California Secretary of State. Termination is effective immediately.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

The "termination" in the State Bar Rule refers to termination of the certification of a limited liability partnership. Although the Alleged Debtor may have been dissolved, neither the Bankruptcy Code nor California state law prohibits a dissolved limited liability partnership from winding up its affairs through bankruptcy.

Courts look to state law to determine if an entity may properly be the subject of an involuntary petition. *See In re ABZ Ins. Services, Inc.*, 245 B.R. 255, 257 (Bankr. N.D. Tex. 2000); *In re Int'l Zinc Coatings & Chem. Corp.*, 355 B.R. 76, 83 (Bankr. N.D. Ill. 2006); and *In re Quad City Minority Broadcasters, Inc.*, 252 B.R. 773, 774 (Bankr. S.D. Iowa 2000). If state law provides for the continuation of a corporation to exist after dissolution, such as for the purpose of winding up, the entity is eligible for bankruptcy protection. *Id.*

Pursuant to Cal. Corp. Code § 16802(a), "a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed." The California statutes related to limited liability partnerships do not provide an alternative process for winding up and termination. *See* Cal. Corp. Code §§ 16951 et al. Under Cal. Corp. Code § 2010—

- (a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.
- (b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof.
- (c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

Thus, both the partnership and corporate statutes in California envision a winding up process for a dissolved entity.

Here, the Bankruptcy Code treats the Alleged Debtor as a corporation. "Courts look to state law to determine whether a LLP-debtor is a 'partnership' for purposes of the Code." *In re Dewey & LeBoeuf LLP*, 518 B.R. 766, 776 (Bankr. S.D.N.Y. 2014). "The Court must examine the potential liability to which the partners of the LLP are exposed under applicable state law to determine whether that state's version of a LLP constitutes a 'partnership' or 'corporation' under the Code." *Id.*, at 776-77. In *Dewey & LeBoeuf*, the court analyzed a New York state statute which outlined the liability of partners of a limited liability partnership. *Id.*, at 777. That New York state statute reads:

no partner [of a registered LLP] ... is liable or accountable, directly or indirectly (including by way of indemnification, contribution or otherwise), for any debts, obligations or liabilities of, or chargeable to, the registered limited liability partnership or each other, whether arising in tort, contract or otherwise, which are incurred, created or assumed by such partnership while such partnership is a registered limited liability partnership, solely by reason of being such a partner or acting (or omitting to act) in such capacity or rendering professional services or otherwise participating (as an employee, consultant, contractor or otherwise) in the conduct of the other business or activities of the registered limited liability partnership....

N.Y. P'ship Law § 26(b). In looking at this statute, the *Dewey & LeBoeuf* court held that the limited liability partnership in that case should be treated as a corporation for purposes of the Bankruptcy Code. *Id.*, at 777-78. This is because the Bankruptcy Code defines a "corporation" as including a "partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association." 11 U.S.C. § 101(9)(A)(ii).

California law on limited liability partnerships is nearly identical to the New York statute. In California, pursuant to Cal. Corp. Code § 16306(c)—

Notwithstanding any other section of this chapter, and subject to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Marcin Lambirth LLP**

**Chapter 7**

subdivisions (d), (e), (f), and (h), a partner in a registered limited liability partnership is not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the partnership or another partner in the partnership, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the partnership.

*See also In re Beltway Law Grp., LLP*, 514 B.R. 341, 342-45 (Bankr. D.D.C. 2014) (same analysis under District of Columbia law); *and In re Rambo Imaging, L.L.P.*, 2008 WL 2778846, at \*6-7 (Bankr. W.D. Tex. Jul. 15, 2008) (same analysis under Texas law).

As such, the Alleged Debtor is treated as a corporation for purposes of the Bankruptcy Code. Because California law permits corporations to wind up their affairs after dissolution, the Alleged Debtor is eligible for bankruptcy relief.

***D. Abstention***

The objecting creditors note that they have standing to request dismissal or abstention under 11 U.S.C. § 305(a). Although creditors may request dismissal or abstention, they may do so *after* entry of an order for relief. *See MarketXT Holdings*, 347 B.R. at 160 n.4 ("There are, of course, grounds on which parties in interest may seek dismissal... *after an order for relief has been entered*, including motions to dismiss or abstain....") (emphasis added). In any case, even if the Parrott Creditors and the Miller Creditors presently have standing to request dismissal or abstention under 11 U.S.C. § 305(a), the parties have not demonstrated that dismissal or abstention better serves the interests of creditors and the Alleged Debtor.

"[N]otwithstanding a bankruptcy court's jurisdiction over an involuntary case pursuant to § 303, § 305(a) provides that the bankruptcy court may dismiss an involuntary case, or suspend all proceeding in that case, and thereby decline to exercise jurisdiction." *In re Macke Int'l Trade, Inc.*, 370 B.R. 236, 246 (B.A.P. 9th Cir. 2007). Section 305(a) provides in relevant part:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Marcin Lambirth LLP**

**Chapter 7**

The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension...

11 U.S.C. § 305(a)(1). "Before a court may refrain from exercising jurisdiction over an otherwise proper case, it must make specific and substantiated findings that the interests of the creditors and the debtor will be better served by dismissal or suspension." *Macke Int'l Trade*, 370 B.R. at 247. The factors a court should consider are:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.

*In re Marciano*, 459 B.R. 27, 46–47 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

"Because an order to dismiss under § 305(a) is not reviewable by the courts of appeal... such a dismissal is an extraordinary remedy of narrow breadth, which may be utilized to prevent the commencement and continuation of disruptive involuntary cases." *Macke Int'l Trade*, 370 B.R. at 247 (internal quotations omitted). "The moving party bears the burden to demonstrate that the interests of the debtor and its creditors would benefit from dismissal or suspension of proceedings under § 305(a) (1)." *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2008).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

Here, the factors weigh in favor of denying dismissal or abstention under § 305(a). First, a bankruptcy case will result in more economical and efficient administration. As it stands, the Parrott Creditors and the Miller Creditors will have to pursue piecemeal litigation and collection in state court while exposing the Alleged Debtor's assets, if any, to other creditors. In bankruptcy, the automatic stay will continue to prohibit any action taken against the Alleged Debtor or its property while the chapter 7 trustee investigates the Alleged Debtor's assets and liabilities. A bankruptcy case will prevent a race to the courthouse that will favor some creditors over others. Moreover, bankruptcy will allow the chapter 7 trustee to pool all of the Alleged Debtor's assets before equitably distributing the assets to creditors in order of priorities. The Parrott Creditors and the Miller Creditors have not articulated an alternative means of achieving such an equitable distribution.

In addition, the Alleged Debtor and its creditors will not be able to work out less expensive out-of-court arrangements because the parties have not been able to locate the Alleged Debtor's principal. Upon entry of an order for relief, the chapter 7 trustee will be able to represent the estate and potentially negotiate claims with creditors. As it stands, even if the Parrott Creditors and the Miller Creditors obtain judgments against the Alleged Debtor, it will be very difficult for these parties to collect on their judgments. A chapter 7 bankruptcy case provides these creditors an opportunity to receive a distribution without the expense of pursuing the Alleged Debtor in state court. Further, there does not appear to be a non-federal insolvency proceeding pending in another forum.

Finally, there does not appear to be an improper purpose for the filing of the involuntary petition. The Miller Creditors suggest that the petition was "likely" not filed in good faith. However, the reasons articulated by the Miller Creditors do not demonstrate a lack of good faith. The Miller Creditors contend that the disputes raised by Petitioning Creditors are state law claims. However, the factor courts consider is not whether claims held by creditors are state law claims (many claims against the estate inevitably will be based on state law), but whether the bankruptcy case is essentially a two-party dispute that may be promptly adjudicated in state court. The presence of both the Parrott Creditors and the Miller Creditors as creditors with claims against the estate, as well as the claims asserted by Petitioning Creditors, demonstrates that this case is not merely a two-party dispute. In fact, the Miller Creditors themselves acknowledge that "unsecured creditors abound." Miller Objection, p. 8.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

In addition, the Miller Creditors note that the Alleged Debtor may not have any cash flow, may not currently be operating and may only have one asset. Even if this is true, which has not been established by evidence, the Alleged Debtor need not have cash flow or ongoing business to be a debtor in a chapter 7 case, which will result in liquidation of the Alleged Debtor's assets as opposed to a reorganization using the Alleged Debtor's income. Moreover, even if the Alleged Debtor has a single asset, even one asset may have significant value and result in distribution to creditors. Because entry of an order for relief will lead to appointment of a chapter 7 trustee, there will be an independent party investigating these matters.

The Parrott Creditors also do not meet their burden of demonstrating that abstention or dismissal is appropriate. The Parrott Creditors note that Petitioning Creditors will not be able to provide the chapter 7 trustee with information regarding the assets and liabilities of the Alleged Debtor. The Parrott Creditors do not cite any authority standing for the proposition that Petitioning Creditors have a duty to provide such information. The Parrott Creditors also state that Mr. Lambirth is the only party who will benefit from this bankruptcy case, but do not specify why any of the Petitioning Creditors would benefit more than other creditors. Once again, an independent chapter 7 trustee will be tasked with overseeing the estate to ensure that, should there be any assets to distribute, such distribution will be equitable and in accordance with the Bankruptcy Code.

It is in the best interest of all parties to enter an order for relief so that the chapter 7 trustee may fully investigate the Alleged Debtor's assets and liabilities. The investigation may lead to a more accurate financial picture of the Alleged Debtor, which will provide the Court and creditors a better idea regarding whether the case should be dismissed, converted or completed as a chapter 7 case. In addition, nothing will prevent the Parrott Creditors, the Miller Creditors or any other creditor of the estate to move for dismissal after entry of an order for relief.

### **III. CONCLUSION**

The Court will enter an order for relief.

The Court will prepare the order.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Marcin Lambirth LLP**

**Chapter 7**

**Debtor(s):**

Marcin Lambirth LLP

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**1:11-10439 Navid Bahrami-Daghigh**

**Chapter 11**

**#2.00** Post confirmation status conference

fr. 4/26/12; 8/30/12; 9/6/12; 9/13/12; 01/31/13; 7/18/13; 11/14/13;  
3/13/14; 9/18/14; 3/19/15; 9/17/15; 3/17/16; 9/15/16; 3/16/17; 9/14/17;  
3/15/18; 6/7/18; 7/19/18

Docket 238

**\*\*\* VACATED \*\*\* REASON: Order entering final decree entered 7/30/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**Movant(s):**

Navid Bahrami-Daghigh

Represented By  
David I Brownstein  
Daniel C Zamora  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#3.00** Post-Confirmation status conference re chapter 11 case

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017;  
1/11/18; 1/25/18; 3/15/18; 7/19/18

Docket 1

**Tentative Ruling:**

The Court will continue the post-confirmation status conference to **December 6, 2018 at 1:00 p.m.**

Based on the *Chapter 11 Second Post-Confirmation Status Report* [doc. 261], and the reorganized debtor's material default under the confirmed chapter 11 plan, the Court will issue an order to show cause why, if the reorganized debtor has not become current on his chapter 11 plan payments by **November 16, 2018**, this case should not be converted to a case under chapter 7, in accordance with 11 U.S.C. §§ 105(a) and 1112(b)(1) and (b)(4)(N).

On or before **November 23, 2018**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE.**

Appearances on August 23, 2018 are excused.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

**#4.00** U.S. Trustee motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 88

**\*\*\* VACATED \*\*\* REASON: Order of dismissal with 180 day bar entered  
7/26/18 [Dkt.93]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10381 Magtrans, Inc.**

**Chapter 7**

**#5.00** Trustee's Motion for dismissal of chapter 7 case pursuant to 11 U.S.C. sec. 305 or sec. 707 for failure to comply with the Trustee's request for the debtor to produce documents and/or file amendments to schedules

Docket 15

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Magtrans, Inc.

Represented By  
Charles Shamash  
Joseph Caceres

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#6.00** Motion for protective order of application for the Rule 2004 Examination and the production of documents pursuant to Bankruptcy Rule 2004 of Deborah Lois Adri

fr. 6/7/18; 7/19/18

Docket 76

**Tentative Ruling:**

Deny as moot.

On February 16, 2018, Deborah Lois Adri (the "Debtor") filed a voluntary chapter 11 case. In her schedules, the Debtor listed Schuller & Schuller ("Schuller") as an unsecured creditor holding a disputed claim in the amount of \$331,651.

On May 4, 2018, Schuller filed an *Application for The 2004 Examination and the Production of Documents Pursuant to Bankruptcy Rules 2004 of Deborah Lois Adri* (the "2004 Application") [doc. 68]. On May 9, 2018, the Debtor filed an objection to the 2004 Application [doc. 72]. On May 11, 2018, the Debtor filed an *Emergency Motion for Protective Order of Application for the Rule 2004 Examination and the Production of Documents Pursuant to Bankruptcy Rule 2004 of Deborah Lois Adri* (the "Motion for Protective Order") [doc. 76].

On June 7, 2018, the Court held a hearing on the Motion for Protective Order. The Court instructed the parties to file a stipulation re: discovery issues pursuant to Local Bankruptcy Rule 7026-1(c)(3) (the "Stipulation") no later than June 28, 2018. The Court continued the hearing on the Motion for Protective Order to July 19, 2018. On June 28, 2018, the parties timely filed the Stipulation [doc. 115].

On July 13, 2018, Schuller filed proof of claim no. 9 (the "Claim"). On July 17, 2018, the Debtor filed an objection to the Claim (the "Objection") [doc. 123]. On July 19, 2018, in light of the Claim and Objection, the Court further continued the hearing on the Motion for Protective Order to August 23, 2018.

In light of the Court's disallowance of the Claim (see matter no. 7 on today's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

calendar), Schuller does not have standing to examine the Debtor pursuant to Federal Rule of Bankruptcy Procedure 2004. Accordingly, the Court will deny the 2004 Application. Because the Court will deny the 2004 Application, the Court also will deny the Motion for Protective Order as moot.

The Debtor must submit within seven (7) days: (i) an order denying the 2004 Application; and (ii) an order denying as moot the Motion for Protective Order.

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

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#7.00** Objection to claim Number 9 by claimant Schuller & Schuller.

Docket 130

**Tentative Ruling:**

The Court will sustain the debtor's objection to claim no. 9.

**I. Background**

In December 2006, Deborah Lois Adri ("Debtor") retained Schuller & Schuller ("Schuller") to represent her in a state court case (the "State Court Case"). On May 6, 2008, Schuller's representation of Debtor in the State Court Case was terminated by a substitution of attorney that was filed with the state court [doc. 123, Exh. 2]. On May 12, 2008, Schuller mailed a letter to Debtor demanding that she pay its alleged outstanding invoice (the "May 12 Letter") [doc. 123, Exh. 3]. On June 23, 2008, Debtor made a claim to her credit card company disputing charges billed by Schuller [doc. 123, Exh. 4].

Schuller alleges that it continued to send monthly billing statements to Debtor each month from May 31, 2008 through January 31, 2018 [doc. 143, Exh. D; Declaration of Henri R. Schuller ("Schuller Decl."), doc. 143, ¶ 9; Declaration of Denise Denney-Garrett ("Denney-Garrett Decl."), doc. 143]. Further, each month Schuller added interest to the original obligation pursuant to the terms of the contract between the parties, which is reflected in the monthly billing statements [doc. 143, Exhs. A & D].

On February 16, 2018, Debtor filed a voluntary chapter 11 petition. In her original schedule E/F, Debtor listed a \$331,651.00 debt owed to Schuller for attorney fees. Debtor indicated that the debt is disputed. (Doc. 1, at p. 34.)

On March 29, 2018, the first § 341(a) meeting of creditors took place. Prior to the meeting, Schuller made a demand for documents related to Debtor's interest in real property owned directly by Debtor or by any holding entity. On May 3, 2018, a continued § 341(a) meeting was held. Debtor's counsel did not produce the documents requested by Schuller, but instead produced a tax transcript. (Declaration

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**  
of Shai Oved, ¶ 2.)

**Chapter 11**

On May 4, 2018, Schuller's counsel filed an application for Rule 2004 examination of Debtor (the "2004 Application") [doc. 68]. On May 9, 2018, Debtor objected to the 2004 Application. In her objection, the Debtor agreed to produce certain documents, but disputed the scope and relevance of other document requests.

On May 11, 2018, Debtor filed a motion for a protective order (the "Protective Order Motion") [doc. 76]. On May 13, 2018, Schuller filed a response to the Protective Order Motion [doc. 84]. On June 14, 2018, the Court held a hearing on the Protective Order Motion. The Court continued the hearing on the Protective Order Motion to July 19, 2018, to allow the parties to file a stipulation pursuant to Local Bankruptcy Rule 7026-1(c)(3), addressing the disputed document production categories.

On June 3, 2018, the Court entered an order granting the motion filed by Schuller to extend time to file a complaint under 11 U.S.C. § 523 and/or to deny a discharge (the "Order Extending Time") [doc. 120]. The Order Extending Time provided that Schuller's deadline to file such complaint is August 20, 2018.

On July 13, 2018, Schuller filed proof of claim no. 9 (the "Claim") for services performed, fees/costs advanced and finance charges [Claim 9, p. 2]. On July 17, 2018, the Debtor filed an objection to the Claim (the "Objection") [doc. 123] on the basis that the statute of limitations bars the Claim.

On July 19, 2018, the Court continued the hearing on the Protective Order Motion to August 23, 2018, to coincide with the hearing on the Objection.

On August 8, 2018, Schuller filed a response to the Objection (the "Response") [doc. 145]. In the Response, Schuller argues that the statute of limitations has not run on the Claim. Schuller alleges that the Claim is not based on the original contract between the parties, but rather on subsequent events that created an account stated. Schuller contends that each monthly statement adding interest on the original obligation is a "new account, so the statute of limitations has been tolled" [doc. 145, p. 6, lines 10-11].

On August 16, 2018, Debtor filed a reply to the Response (the "Reply") [doc. 147]. In the Reply, Debtor argues that the gravamen of the Claim is breach of contract, which is barred by the statute of limitations. Debtor further contends that even if the Claim is



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

based on an account stated or book account, the account closed in 2008, and therefore, the Claim is barred by the statute of limitations.

**II. Discussion**

*A. Claim Objection*

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 3003(b)(1), which applies to chapter 11 cases:

The schedule of liabilities filed pursuant to § 521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

Pursuant to FRBP 3003(c)(2):

Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

*B. Statute of Limitations*

"Under § 502(b)(1), a claim must be disallowed if the claim is unenforceable under applicable nonbankruptcy law." *In re Paterno*, No. BAP SC-14-1189-KUJUK, 2015 WL 735919, at \*3 (B.A.P. 9th Cir. Feb. 20, 2015) "The grounds for disallowance that may be asserted in support of a § 502(b)(1) claim objection include those defenses that would be available to the debtor under state law." *Id.*

Debtor's principal argument is that the Claim is time barred by California Code of Civil Procedure ("CCP") § 337. CCP § 337(1) provides a statute of limitations of four years for claims based upon a contract. CCP § 337(2) provides 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.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

"The statute of limitations that applies to an action is governed by the gravamen of the complaint, not the cause of action pled." *Profl Collection Consultants v. Lauron*, 8 Cal. App. 5th 958, 967–68 (Ct. App. 2017), *reh'g denied* (Mar. 13, 2017), *review denied* (Apr. 26, 2017). "It is the substance of the action, rather than the form of the pleading or the labels employed, that governs." *Id.*

*1. Breach of Contract*

"A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Profl Collection Consultants v. Lauron*, 8 Cal. App. 5th at 967–68. Further, a cause of action that is barred by the statute of limitations "cannot be resurrected by the device of pleading common counts, such as open book account and account stated, in lieu of the [] contract where . . . the common counts and the cause of action based on a [] contract are factually identical in all material respects." *Filmservice Labs., Inc. v. Harvey Bernhard Enterprises, Inc.*, 208 Cal. App. 3d 1297, 1308 (Ct. App. 1989). "Thus, a complaint asserting common counts does not supersede the underlying contract." *Profl Collection Consultants v. Lauron*, 8 Cal. App. 5th at 967–68.

In this case, the evidence establishes that Debtor and Schuller had an agreement that contractually obligated Debtor to pay the attorney's fees [doc. 143, Exh. A]. Schuller admits that its claim is based on recovery of its costs and fees pursuant to the attorney-client agreement it entered into with Debtor [Schuller Decl., ¶¶5-9]. Schuller further admits that it has been charging interest pursuant to the terms of the agreement [Denney-Garrett Decl., ¶ 6]. As such, the basis for the Claim is that Debtor failed to pay the attorney's fees when they came due. Thus, the gravamen of Schuller's claim is breach of contract. The mere fact that Schuller alleges that the Claim is based on an account stated does not mean that the gravamen of the Claim is not breach of contract. Schuller cannot resurrect a breach of contract action by alleging that the Claim is based on an account stated when the Claim is factually identical in all material respects to a breach of contract action.

Because the Claim is based on a breach of contract cause of action, the claim is time barred by the four-year statute of limitations. Debtor was in breach of contract when

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

she failed to pay the attorney's fees requested in the May 12 Letter in 2008. Ten years have lapsed since Debtor's breach, which is well beyond the four-year statute of limitations. Thus, the Claim is unenforceable and must be disallowed.

*2. Account Stated and Book Account*

"Actions to recover on an account stated or a book account accrue on the date of the last item or entry in the account." *Prof'l Collection Consultants*, 8 Cal. App. 5<sup>th</sup> at 966. The date of the last item is the date of "the last payment or charge." *In re Orozco*, No. 2:13-BK-15745-NB, 2017 WL 3126797, at \*1 (Bankr. C.D. Cal. July 21, 2017).

*a. Book Account*

"A 'book account' is 'a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner.'" *Prof'l Collection Consultants*, 8 Cal. App. 5<sup>th</sup> at 969 (citing CCP § 337a). "Examples of statements held to be book accounts include a law firm's billing statements reflecting work performed on an hourly basis (*In re Roberts Farms, Inc.* (9th Cir.1992) 980 F.2d 1248, 1252, applying California law) and a ledger sheet recording amounts due for hay deliveries (*Costerisan v. DeLong* (1967) 251 Cal.App.2d 768, 769–771, 59 Cal.Rptr. 803)." *Id.*

A book account is "open" where a balance remains due on the account. *Id.* at 969. "A book account does not remain open indefinitely so that any payment towards the debt necessarily becomes an "entry" for purposes of the applicable limitations period." *R.N.C. Inc. v. Tsegeletos*, 231 Cal. App. 3d 967, 972 (Ct. App. 1991). "Instead, a book account like any open account becomes closed once the account creditor ceases to extend credit and there will be no further activity on the account other than the payments by a creditor towards the settled debt." *Id.* "[T]he 'open' or 'closed' nature of a book account turns not on the account balance per se, but on the parties' expectations of possible future transactions between them [on that account]." *Id.* "[T]he relevant date is the date the debt becomes settled; i.e., the date the relationship

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

between the parties has come to an end other than for purposes of paying amounts due or past due." *Id.* at 975.

In this case, the Claim is based on Schuller's billing statements reflecting work performed on an hourly basis [doc. 123, Exh. 1]. As such, the Claim can be construed as based on a book account. *See In re Roberts Farms, Inc.*, 980 F.2d at 1252. However, Debtor has provided sufficient evidence to show that the account was closed in 2008. Schuller did not intend to provide any further services to Debtor as evidenced by the May 12 Letter and substitution of attorney filed with the state court [doc. 123, Exhs. 2 & 3]. At that point, the only activity expected on the account was payments by the Debtor. Debtor and Schuller's relationship came to an end in 2008 other than for purposes of paying amounts due or past due. Debtor has not made any payments since 2008 and Schuller has not performed any additional services for Debtor. As such, the statute of limitations expired in 2012.

Schuller cites *Doyle v. McPherson*, 36 Cal. App. 2d 81, 84 (1939), for the proposition that an interest charge is an "item" on an account so as to fall within the parameters of the "last item" accrual of the four-year statute of limitations. However, in *Doyle* the court stated that the last item on the open book account related to a small credit. The court went on to state that the next previous item was a charge for interest. *Doyle*, 36 Cal. App. 2d at 84. The court did not state that interest charges alone could keep a book account open. Thus, the Claim is unenforceable and must be disallowed.

*b. Account Stated*

"An account stated is 'an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing.'" *Prof'l Collection Consultants*, 8 Cal. App. 5<sup>th</sup> at 969 (citing *Maggio, Inc. v. Neal*, 196 Cal.App.3d 745, 752 (1987)). "[A]n element essential to render the account stated is that it receive the assent of both parties, but the assent of the party sought to be charged may be implied from his conduct." *Id.* (citing *Hansen v. Fresno Jersey Farm Dairy Co.*, 220 Cal. 402, 408 (1934)).

"For example, '[w]hen a statement is rendered to a debtor and no reply is made in a reasonable time, the law implies an agreement that the account is correct as rendered.'" *Prof'l Collection Consultants*, 8 Cal. App. 5<sup>th</sup> at 969 (citing *Maggio, supra*, at p. 753). "As to what is a reasonable time which should elapse from the time of the service of the account on the debtor in order to create an account stated, in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 23, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

absence of a positive declaration of acquiescence, is one of law for the court." *Lacy Mfg. Co. v. Gold Crown Mining Co.*, 52 Cal. App. 2d 568, 577 (1942). "It has been held that a delay of six months in repudiating the agreement is as a matter of law unreasonable and that, because of it, acquiescence will be presumed and that an account stated is thereby created." *Id.*

In this case, Debtor disputed the charges by Schuller with her credit card company within six months of when the amounts became due. Schuller admits knowing of the dispute [Schuller decl., ¶ 11]. As such, Debtor did dispute the charges on the account within a reasonable amount of time and Schuller was aware of the dispute. Thus, contrary to Schuller's contention, an account stated was not created by Debtor's lack of objection.

**III. Conclusion**

For the reasons discussed above, the Court will sustain Debtor's objection to the Claim.

Debtor must submit a proposed order within seven (7) days.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, August 27, 2018**

**Hearing Room 301**

9:30 AM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #1.00** Trial re first amended complaint to  
1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)  
2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)  
3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)  
4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18; 4/11/18; 6/6/18

Docket 1

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 28, 2018**

**Hearing Room 301**

9:30 AM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #1.00** Trial re first amended complaint to  
1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)  
2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)  
3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)  
4) determine the dischargeability of debts pursuant to 523(a)(10)

fr. 2/14/18; 2/21/18; 4/11/18; 6/6/18

Docket 1

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, August 28, 2018**

**Hearing Room 301**

3:00 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#2.00** Motion for Authority to Use Cash Collateral

Docket 7

**Party Information**

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 30, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#1.00** Status conference re chapter 11 case

fr. 7/5/18; 7/26/18, 8/9/18; 8/23/18

Docket 1

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, August 30, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#2.00** Order to show cause why this case should not be dismissed for failure to operate in accordance with State Law

Docket 0

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

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11936 Jose Luis Gonzalez**

**Chapter 13**

**#1.00** Emergency motion to enforce the automatic stay

fr. 8/1/18

Docket 11

**Tentative Ruling:**

The Court will grant the motion on an interim basis, through October 3, 2018, and continue the hearing to **9:30 a.m. on October 3, 2018.**

This is the debtor's fourth chapter 13 case. The debtor's schedule I indicates that he and his spouse make a combined income of \$15,000.00 per month. However, the debtor's statement of financial affairs does not support this assertion. The debtor's chapter 13 plan is based on an income of \$15,000.00 per month. On or before September 26, 2018, the debtor must file a declaration signed under penalty of perjury demonstrating that he has made his August and September 2018 chapter 13 plan payments and his August and September 2018 deed of trust payments regarding his residence.

Is the debtor interested in participating in the Court's loan modification program?

**8/1/18 Tentative Ruling**

Grant on an interim basis, until the next hearing. The Court intends to continue this hearing to **September 5, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(4), in order to impose the automatic stay in a case filed within one year of two or more cases of the debtor that were pending but were dismissed, the debtor must show that the pending case was filed in good faith as to the creditors to be stayed.

***The First Case.*** On August 31, 2017, Jose Luis Gonzalez (the "Debtor") filed a chapter 13 petition, commencing case no. 1:17-bk-12312-MT (the "First Case"). In the First Case, the Debtor was represented by counsel. On August 31, 2017, the Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jose Luis Gonzalez**

**Chapter 13**

issued a *Notice of Dismissal of Case if Required Documents Are Not Filed or Signed* (“Dismissal Notice”) [1:17-bk-12312-MT, doc. 3]. The Dismissal Notice provided that the First Case would be dismissed if the Debtor did not comply within 72 hours. On September 6, 2017, the Court entered an order dismissing the First Case [1:17-bk-12312-MT, doc. 10].

***The Second Case.*** On January 3, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10017-VK (the “Second Case”). In the Second Case, the Debtor was represented by counsel. On January 4, 2018, the Court entered an *Order to Comply with Bankruptcy Rule 1007 and 3015(B) and Notice of Intent to Dismiss Case* (the “Order to Comply”) [1:18-bk-10017-VK, doc. 7]. The Order to Comply directed the Debtor to file his chapter 13 plan no later than 14 days after the petition date. No chapter 13 plan was filed. On January 22, 2018, the Court entered an order dismissing the Second Case [1:18-bk-10017-VK, doc. 12].

***The Third Case.*** On January 29, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10251-MT (the “Third Case”). In the Third Case, the Debtor was represented by counsel. On March 28, 2018, the Court entered an order dismissing the Third Case, for failure to appear at the 341(a) meeting and/or to make pre-confirmation plan payments [1:18-bk-10251-MT, doc. 29].

***The Pending Case.*** On July 31, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-11936-VK (the “Pending Case”). On August 1, 2018, the Debtor filed an *Emergency Motion to Enforce the Automatic Stay* (the “Motion”) [doc. 11]. Through the Motion, the Debtor seeks to impose the automatic stay in his case as to all secured creditors, with respect to his single family residence located at 22051 Sagebrook Drive, Chatsworth, CA 91311 (the “Property”).

The Debtor states that on August 2, 2017, he submitted a loan modification application to Bank of America. Bank of America subsequently informed the Debtor that the loan modification process had been transferred to Carrington Mortgage Services, LLC (“Carrington”). Then the Debtor was informed that he had to re-start the loan modification process, directly with Carrington. On December 12, 2017, the Debtor submitted a loan modification application to Carrington. The Debtor alleges that Carrington improperly denied his loan modification application.

The Debtor represents that the attorneys who assisted him with his prior bankruptcy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jose Luis Gonzalez**

**Chapter 13**

cases are responsible for the dismissal of those cases, because of their inadequate assistance. The Debtor further represents that he can confirm a 100% payment plan and has adequate income to cover the ongoing mortgage payments plus payment of arrears over 5 years.

In light of the foregoing, the Court will grant the Motion on an interim basis and impose the automatic stay on all secured creditors up to the date of the continued hearing. **No later than August 8, 2018**, the Debtor must also file and serve notice of the continued hearing, and serve the Motion, on *all* secured creditors. The notice of continued hearing must state that the deadline to file an opposition to the Motion is **August 22, 2018**. The deadline to file a reply is **August 29, 2018**. If the Debtor does not appear at the continued hearing on September 5, 2018, the Court may deny the Motion and lift the automatic stay.

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

**Debtor(s):**

Jose Luis Gonzalez

Represented By  
Hovig J Abassian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11965 Carmit Benbaruh**

**Chapter 13**

**#1.10** Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

fr. 8/22/18

Docket 101

**Tentative Ruling:**

At the prior hearing held on August 22, 2018, the debtor appeared and stated she was ready, willing and able to cure the post-petition arrearages. The Court continued the hearing to September 5, 2018 at 9:30 a.m. and instructed the debtor to get in touch with counsel for the movant and, if the parties could not resolve the matter, to appear at the hearing with the cure amount.

If the debtor does not appear at the continued hearing with the required cure payment, the Court may grant the motion, as set forth in its prior tentative ruling.

**Tentative Ruling from 8/22/18**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Carmit Benbaruh**

**Chapter 13**

**Party Information**

**Debtor(s):**

Carmit Benbaruh

Represented By

Leslie Richards - SUSPENDED BK -

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:14-15332 Ruben Adrian Murguia**

**Chapter 13**

**#1.20 Motion for relief from stay [RP]**

US BANK TRUST N.A.  
VS  
DEBTOR

fr. 8/22/18

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ruben Adrian Murguia

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:16-12590 Douglas Tucker

Chapter 13

#2.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 8/1/18

Docket 45

\*\*\* VACATED \*\*\* REASON: stip filed per order entered on 9/4

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Douglas Tucker

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12317 Yuliy Mosk**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING LLC  
VS  
DEBTOR

fr. 8/15/18

Docket 56

**Tentative Ruling:**

**Tentative Ruling from 8/15/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Yuliy Mosk

Represented By  
Alla Tenina

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Yuliy Mosk**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:17-10038 Oganesh Pashayan and Anahit Pashayan

Chapter 13

#4.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 8/15/18

**STIP filed 8/27/18**

Docket 37

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 8/27/18 [doc. 44]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Oganesh Pashayan

Represented By  
Abraham Dervishian

**Joint Debtor(s):**

Anahit Pashayan

Represented By  
Abraham Dervishian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#5.00** Motion for relief from stay [RP]

JPMORGAN CHASE BANK, N.A.  
VS  
DEBTOR

fr.7/25/18; 8/8/18

Docket 29

**Tentative Ruling:**

**Tentative Ruling from 7/25/18**

Deny the motion if debtor commences making monthly payments to creditor of \$5,350 by August 1, 2018.

**Party Information**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik  
Roksana D. Moradi-Brovia



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11749 Maria Venesia Navarro Macias**

**Chapter 7**

**#7.00 Motion for relief from stay [PP]**

AMERICAN HONDA FINANCE CORPORATION  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Maria Venesia Navarro Macias

Represented By  
Nancy Korompis

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13561 Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.**

**Chapter 7**

**#8.00** Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 195

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Akop Terpogosyan

Pro Se

**Joint Debtor(s):**

Lilit Chaghayan

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Leonard Pena

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#9.00 Amended motion for relief from stay [RP]

LINDSAY F NIELSON  
VS  
DEBTOR

Docket 36

\*\*\* VACATED \*\*\* REASON: No chambers copy of motion provided.  
Motion is not on calendar.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:14-10704 Rogelio Rios Robles and Florencia Martinez Rios

Chapter 13

#10.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 113

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Rogelio Rios Robles

Represented By  
Leonard Pena

**Joint Debtor(s):**

Florencia Martinez Rios

Represented By  
Leonard Pena

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Rogelio Rios Robles and Florencia Martinez Rios**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10211 Haysun Chang**

**Chapter 13**

**#11.00** Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

Docket 34

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Haysun Chang

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:18-10476 Robert Jay Rosensweig

Chapter 13

#12.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No opposition has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Robert Jay Rosensweig

Represented By  
Elena Steers

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Robert Jay Rosensweig**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11299 James Lamont Dubose**

**Chapter 13**

**#13.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

Docket 35

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

James Lamont Dubose

Represented By  
Stephen L Burton

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12016 Gregory Bernard Walker and Brenda Yvonne Walker**

**Chapter 13**

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

Docket 10

**\*\*\* VACATED \*\*\* REASON: order entered on 9/4/18 transferring case to MB**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gregory Bernard Walker

Represented By  
Thomas B Ure

**Joint Debtor(s):**

Brenda Yvonne Walker

Represented By  
Thomas B Ure

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, September 5, 2018

Hearing Room 301

9:30 AM

1:14-14532 Juan Jose Medrano

Chapter 13

#15.00 Hearing on Opposition Re: Default Under Adequate Protection Order;  
Request for Entry of Order Granting Relief from Stay

Docket 132

\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of request for default  
filed 8/24/18. [Dkt. 137]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Juan Jose Medrano

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#16.00**      Status conference re: complaint for interpleader

Docket      1

**\*\*\* VACATED \*\*\* REASON: Continued to 12/12/18 at 1:30 p.m. per order**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Pro Se

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#17.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip); 5/2/18(stip); 6/6/18(stip); 7/18/18(stip); 8/1/18(stip)

**Stipulation to continue filed 7/26/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 7/27/18.  
Hearing continued to 10/3/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**

**Thomas Jang Young Yoon**

Anthony A Friedman

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01102      Zarrabi et al v. Akhlaghpour

**#18.00**      Pretrial Conference re complaint for nondischargeability  
of debt

from: 2/14/18; 3/28/18

**Stip to dismiss filed 8/21/18**

Docket      1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation to dismiss  
entered 8/24/18.**

**Tentative Ruling:**

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

Kamboozia Zarrabi

Represented By  
Stella A Havkin

Farideh Akhlaghpour

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10123 Fred Horiat**

**Chapter 7**

Adv#: 1:18-01042 Ingram v. Horiat

**#19.00** Status conference re: complaint to determine dischargability of debt  
(11 U.S.C. §523(a)(5) and (a)(15)

fr. 6/20/18

Docket 1

**Tentative Ruling:**

The plaintiff has not met and conferred with the defendant in accordance with Local Bankruptcy Rule ("LBR") 7026-1 and has not participated in the filing of a joint status report in accordance with LBR 7016-1(a). The plaintiff also did not appear at the status conference held on June 20, 2018. Pursuant to LBR 7016-1(f) and (g), the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the order.

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

**Debtor(s):**

Fred Horiat

Represented By  
David S Hagen

**Defendant(s):**

Fred Horiat

Pro Se

**Plaintiff(s):**

David Ingram

Represented By  
David L Ingram

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

1:30 PM

**1:13-11215 Cindy M Montano**

**Chapter 7**

Adv#: 1:17-01111 Melendrez v. Montano

**#19.10** Staus conference re complaint for determination  
of the dischargeability of a claim

from: 2/14/18; 8/22/18

Docket 1

**Tentative Ruling:**

**8/22/2018 Tentative:**

A pretrial stipulation has not been filed in accordance with the Court's scheduling order [doc. 9] and Local Bankruptcy Rule 7016-1(b), (c), (d) and/or (e). What is the status of the preparation of a joint pretrial stipulation?

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

**Debtor(s):**

Cindy M Montano Pro Se

**Defendant(s):**

Cindy M Montano Pro Se

**Plaintiff(s):**

Antonio Melendrez Represented By  
Michael J Armenta

**Trustee(s):**

Amy L Goldman (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 5, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#20.00** Motion to compel further responses to requests for production of documents, interrogatories and request for admissions

[Re: Request for Admissions]

fr. 8/1/18

Docket 26

**\*\*\* VACATED \*\*\* REASON: Order continuing to 10/17/18 at 1:30 p.m.  
[doc. 47].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#1.00 Application for final fees and/or expenses for Orantes Law Firm P.C.**

Docket 256

**\*\*\* VACATED \*\*\* REASON: Order entered 8/24/18 rescheduling hearing  
to 9/20/18 at 10:30 AM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

10:30 AM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#2.00** Blakeley LLP's Second and Final Application for Compensation and Reimbursement of Expenses counsel for Official Committee of Unsecured Creditors

Docket 205

**\*\*\* VACATED \*\*\* REASON: Order entered 8/24/18 rescheduling hearing to 9/20/18 at 10:30 AM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12433 AAA Nursing Services Inc.**

**Chapter 11**

**#3.00** First interim application for compensation and reimbursement  
of expenses of Michael Jay Berger

fr. 2/8/18; 3/8/18

Docket 89

**\*\*\* VACATED \*\*\* REASON: Order entered 5/4/18 advancing hearing to  
6/7/18 at 10:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

AAA Nursing Services Inc.

Represented By  
Michael Jay Berger

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 303**

10:30 AM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#4.00** First Interim application of Law Offices of Robert M Yaspan, for compensation and reimbursement of expenses incurred as counsel to debtor-in-possession

fr. 8/16/18

Docket 136

**\*\*\* VACATED \*\*\* REASON: Order entered 8/24/18 rescheduling hearing for 9/20/18 at 10:30 AM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#5.00** Chapter 11 Trustees motion for order: (1) Authorizing sale of estates right, title and interest in real property free and clear of lien and interests of Emymac; (2) Approving overbid procedure; (3) Approving payment of commissions; (4) Finding purchaser is a good faith purchaser; (5) Waiving Stay under Rule 6004(H); and (6) Directing turnover of real property

fr. 6/7/18; 7/5/18; 7/19/18

Docket 228

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 8/15/18**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

1:00 PM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#6.00 Disclosure statement describing chapter 11 plan of reorganization  
fr. 7/5/18; 7/19/18

Docket 235

\*\*\* VACATED \*\*\* REASON: Order continuing to 9/20/18 at 2:00 p.m.  
[doc. 301].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17; 5/17/18; 6/7/18; 7/5/18; 7/19/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order continuing to 9/20/18 at 2:00 p.m.  
[doc. 301].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12056 Arina Builders Inc.**

**Chapter 7**

**#7.10** Order to show cause re: dismissal

Docket 7

**Tentative Ruling:**

The Court will discharge the Order to Show Cause.

On August 2018, Arina Builders, Inc. ("Debtor") filed a Substitution of Attorney [doc. 10] and a Disclosure of Compensation of Attorney for Debtor [doc. 11].

Appearances on September 6, 2018 are excused.

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

**Debtor(s):**

Arina Builders Inc.

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

2:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#8.00 Motion to restrict use of cash collateral and  
for adequate protection.

from: 8/2/18

Docket 33

**Tentative Ruling:**

For the reasons stated below, the Court will deny the motion.

**I. BACKGROUND**

On May 4, 2018, Robert Edward Zuckerman (the "Debtor") filed a voluntary chapter 11 petition. In his schedules, the Debtor listed a secured claim held by Richard Abel ("Creditor") in the amount of \$83,368.28. (Doc. 25, at p. 31.) Creditor's claim is listed as "disputed." (*Id.*) The Debtor also listed monthly income of \$15,000 and monthly expenses of \$13,862.56. (Doc. 25, at p. 61.)

Prepetition, the Debtor was a defendant in several legal proceedings related to his business ventures, among other reasons. One such proceeding was a state court action titled *Liebling, et al. v. Goodrich, et al.*, Sonoma County Superior Court case no. SCV-245738 (the "State Court Action"). In connection with the State Court Action, on March 20, 2017, Creditor obtained a final judgment in the amount of \$83,368.28 (the "Judgment"). (Declaration of Robert Edward Zuckerman, ¶ 5.)

On June 29, 2017, Creditor filed a Notice of Judgment Lien with the California Secretary of State. (Doc. 33, Exh. A.) On January 24, 2018, the state court issued an *Order (1) Granting Motion for Assignment Order; (2) Granting Motion for Restraining Order; (3) Granting Order to Seize* (the "Assignment Order"). (Doc. 33, Exh. B.) The Assignment Order provides, in relevant part:

IT IS HEREBY ORDERED that pursuant to Code of Civil Procedure section 708.510, the interests of judgment debtors Cruickshank, Skarpas and Zuckerman, whether standing in the names of Cruickshank, Skarpas, and Zuckerman or from or through any

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

2:00 PM

CONT...

**Robert Edward Zuckerman**

**Chapter 11**

business entity or person in which Cruickshank, Skarpias, and Zuckerman are affiliated, as well as generated through the use of any license issued by a governmental agency including, but not limited to, California Bureau of Real Estate License No. 00833651, and their rights to receive payment of money due or to become due, including, without limitation, accounts receivable, general intangibles, instruments, securities, accounts, deposit accounts, rents, royalties, fees, dividends, fees, salaries, commissions, residual income, distributions, and all other rights to money, are assigned to judgment creditor Richard Abel to the extent necessary to satisfy the judgment amounts herein in full, including accrued interest using the legal rate of 10% per annum[.]

...

IT IS FURTHER ORDERED that pursuant to Code of Civil Procedure section 708.520 the judgment debtors Cruickshank, Skarpias, and Zuckerman, and any servant, agent, employee, entity, attorney, or any person(s) acting in concert with or participating with the judgment debtors, are hereby restrained from encumbering, disposing, or transferring any and all rights to payment of judgment debtors thereunder.

(Doc. 33, Exh. B, at p. 5.)

On July 3, 2018, Creditor filed a *Motion to Restrict Use of Cash Collateral and for Adequate Protection* (the "Motion") [doc. 33]. No declaration was attached in support of the Motion. Creditor states that he holds a judgment lien on the following items identified in the Debtor's schedules:

- (1) the Debtor's interest in Continental Communities, LLC [doc. 25, at p. 8];
- (2) the Debtor's interest in Valley Circle Estate Realty [doc. 25, at p. 8];
- (3) the Debtor's interest in the Zuckerman Building Company [doc. 25, at p. 8];

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Robert Edward Zuckerman**

**Chapter 11**

- (4) the Debtor's interest in Continental San Jacinto, LLC [doc. 25, at p. 8];
- (5) the Debtor's interest in San Jacinto Z, LLC [doc. 25, at p. 8];
- (6) the Debtor's interest in Maravilla Center, LLC [doc. 25, at p. 8] (collectively, the "Entities");
- (7) the Debtor's real estate license [doc. 25, at p. 9]
- (8) the Debtor's general contractor's license [doc. 25, at p. 9];
- (9) the Debtor's claim for malpractice against his former counsel [doc. 25, at p. 10];
- (10) office furniture and equipment [doc. 25, at p. 10]; and
- (11) twenty cases of wine [doc. 25, at p. 11].

Through the Motion, Creditor seeks to restrict the Debtor's use of cash collateral pursuant to the Judgment and the Assignment Order. On July 19, 2018, the Debtor filed an opposition (the "Opposition") [doc. 38].

## **II. RELEVANT STATE LAW**

California Code of Civil Procedure ("C.C.P.") § 697.510(a) provides, "[a] judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

Pursuant to C.C.P. § 697.530:

(a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time when the lien is created if the personal property is, at that time, any of the following:

- (1) Accounts receivable, and the judgment debtor is located in this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Robert Edward Zuckerman**

**Chapter 11**

state.

(2) Tangible chattel paper, as defined in paragraph (79) of subdivision (a) of Section 9102 of the Commercial Code, and the judgment debtor is located in this state.

(3) Equipment, located within this state.

(4) Farm products, located within this state.

(5) Inventory, located within this state.

(6) Negotiable documents of title, located within this state.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

...

(m) Terms for which definitions are not set forth in Division 1 (commencing with Section 680.010) have the definitions set forth in the Commercial Code.

Pursuant to California Commercial Code ("Com. Code") § 9102(2), an "account" means:

a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Robert Edward Zuckerman**

**Chapter 11**

sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

Pursuant to Com. Code § 9102(79), "tangible chattel paper" means "chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium."

Pursuant to Com. Code § 9102(33), "equipment" means "goods other than inventory, farm products, or consumer goods."

Pursuant to Com. Code § 9102(34), "farm products" means:

[G]oods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

- (A) Crops grown, growing, or to be grown, including both of the following:
  - (i) Crops produced on trees, vines, and bushes.
  - (ii) Aquatic goods produced in aquacultural operations.
- (B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.
- (C) Supplies used or produced in a farming operation.
- (D) Products of crops or livestock in their unmanufactured states.

Pursuant to Cal. Com. Code § 9102(48), "inventory" means:

[G]oods, other than farm products, which are any of the following:

- (A) Leased by a person as lessor.
- (B) Held by a person for sale or lease or to be furnished under a contract of service.
- (C) Furnished by a person under a contract of service.
- (D) Consist of raw materials, work in process, or materials used or consumed in a business.

Pursuant to Com. Code § 7104(a), "a document of title is negotiable if by its terms the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

goods are to be delivered to bearer or to the order of a named person."

Pursuant to C.C.P. § 695.060, "[e]xcept as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment." C.C.P. § 708.630 provides that "judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section."

Pursuant to C.C.P. § 708.510(a):

Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

- (1) Wages due from the federal government that are not subject to withholding under an earnings withholding order.
- (2) Rents.
- (3) Commissions.
- (4) Royalties.
- (5) Payments due from a patent or copyright.
- (6) Insurance policy loan value.

**III. RELEVANT BANKRUPTCY LAW**

Pursuant to 11 U.S.C. § 363(a):

"[C]ash collateral" means 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



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Robert Edward Zuckerman**

**Chapter 11**

section 552(b) of this title, whether existing before or after the commencement of a case under this title.

Pursuant to 11 U.S.C. § 363(c)(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.

Pursuant to 11 U.S.C. § 363(c)(4), "the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control."

Pursuant to 11 U.S.C. § 363(e):

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under [section 362](#)).

Pursuant to 11 U.S.C. § 363(p):

In any hearing under this section-

- (1) the trustee has the burden of proof on the issue of adequate protection; and
- (2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

2:00 PM

CONT... Robert Edward Zuckerman  
IV. DISCUSSION

Chapter 11

Through the Motion, Creditor asserts an interest in the Debtor's (i) six business entities; (ii) real estate license; (iii) general contractor's license; (iv) claim for malpractice against his former counsel; (v) office furniture and equipment; and (vi) twenty cases of wine. Pursuant to § 363(p), Creditor has the burden of proof on the validity, priority, or extent of such interest.

***A. Judgment Lien on Personal Property***

In light of the Judgment and the Notice of Judgment Lien, Creditor appears to hold a judgment lien on the Debtor's personal property, provided that such personal property falls within the categories enumerated in C.C.P. § 697.530(a). On March 20, 2017, a Judgment was entered in the State Court Action, in favor of Creditor and against the Debtor. On June 29, 2017, Creditor filed a Notice of Judgment Lien with the California Secretary of State. Pursuant to C.C.P. § 697.510(a), a judgment lien on the Debtor's personal property was created when Creditor filed the Notice of Judgment Lien. Pursuant to C.C.P. § 697.530(a), Creditor's judgment lien attached to the Debtor's accounts receivable, tangible chattel paper, equipment, farm products, inventory, and negotiable documents of title. Accordingly, Creditor's judgment lien appears to attach to the Debtor's office furniture and equipment identified in his schedules.

However, none of the Debtor's remaining personal property items identified by Creditor appear to fall within the ambit of C.C.P. § 697.530(a). Creditor has not established that his judgment lien attaches to the Debtor's interest in the six business entities. Pursuant to C.C.P. § 695.060, the Debtor's real estate or general contractor licenses are not subject to enforcement of the Judgment. Creditor has not established which category of personal property enumerated in C.C.P. § 697.530(a) applies to the Debtor's claim for malpractice or to the twenty cases of wine.

Notwithstanding the foregoing, the Debtor concedes that Creditor may hold a judgment lien that attaches to the Debtor's personal property not identified by Creditor, or to any after-acquired personal property, that falls within the enumerated categories of § 697.530(a).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

2:00 PM

CONT...

**Robert Edward Zuckerman**  
**B. The Assignment Order**

**Chapter 11**

Creditor argues that pursuant to C.C.P. § 708.510, the Assignment Order transferred to Creditor the Debtor's interest in the six business entities, the Debtor's real estate and general contractor's licenses, and the Debtor's claim for malpractice. C.C.P. § 708.510 provides that a court may order a judgment debtor to assign to a judgment creditor "a right to payment due or to become due." However, the statute does not contemplate transferring to a judgment creditor a judgment debtor's interests in business entities, professional licenses, or litigation claims. Thus, the Debtor appears correct that the Assignment Order assigns only the Debtor's right to receive money due or to become due, including money owed to the Debtor arising from his business entities, and money owed to the Debtor from the use of his business licenses. *See, e.g., Chooljian Bros. Packing Co. v. Tilson*, Case No. 1:08CV42AWIDLB, 2009 WL 111909, at \*2 (E.D. Cal. Jan. 15, 2009) (denying motion for assignment order pursuant to C.C.P. § 708.510, in part because plaintiff sought assignment of title to certain trademarks owned by defendants).

In *Specialty Labs., Inc. v. Advanced Biomedical, Inc. (In re Advanced Biomedical, Inc.)*, 547 B.R. 337 (Bankr. C.D. Cal. 2016), *aff'd*, Case No. AP 14-01275-MW, 2016 WL 7188651 (9th Cir. B.A.P. Dec. 2, 2016), a judgment creditor obtained an assignment order, which provided for the assignment of rights to payment of money due or to become due, pursuant to C.C.P. § 708.510. Shortly after the assignment order was entered, the judgment debtor filed a chapter 11 petition. The judgment debtor listed certain accounts receivables in its schedules. The judgment creditor filed an adversary proceeding, seeking a declaratory judgment that it held title to the accounts receivables. The bankruptcy court held that the assignment order was effective upon entry, and the judgment debtor ceased to own the accounts receivable at issue at the time the assignment order became effective. As a result, the judgment creditor held title to the accounts receivable, and the accounts receivables were not property of the judgment debtor's bankruptcy estate.

Here, the Debtor asserts that as of the petition date, he did not own any right to payment of monies due or to become due as of the petition date. The Debtor did not list any such right to payment in his schedules.

In light of *Advanced Biomedical*, the Debtor appears correct that the Assignment Order did not create a lien or security interest in any of the Debtor's postpetition

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 6, 2018

Hearing Room 301

2:00 PM

CONT... **Robert Edward Zuckerman**

**Chapter 11**

assets. The Assignment Order become effective upon entry, or on January 24, 2018. In accordance with California law and the holding of *Advanced Biomedical*, upon entry of the Assignment Order, the right to payment assigned by the Assignment Order became Creditor's property prepetition on January 24, 2018. As such, any right to payment of monies due or to become due, arising from the Debtor's business entities or the Debtor's use of his licenses, does not appear to be property of the Debtor's bankruptcy estate. Because such right to payment is *not* property of the Debtor's bankruptcy estate, such right to payment is not cash collateral and not subject to the provisions of 11 U.S.C. § 363. Accordingly, Creditor may exercise the right to payment assigned by the Assignment Order without obtaining this Court's authorization.

**C. Cash Collateral**

Pursuant to 11 U.S.C. § 363(a), "cash collateral" includes "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[.]"

The Debtor concedes that based on the Notice of Judgment Lien, Creditor may have an interest in cash collateral as defined in 11 U.S.C. § 363(a). However, the Debtor states that he did not possess any accounts receivable, chattel paper, or negotiable instruments as of the petition date, and the Debtor still does not possess these types of cash collateral. In addition, the Debtor asserts that he has not used, sold, or leased any accounts receivable, chattel paper, or negotiable instruments in which Creditor had an interest as of the filing of the Opposition. Furthermore, the Debtor asserts that he has not used, sold, or leased any right to payment since the petition date.

The Debtor states that his income has fallen short of his projected \$15,000 per month, and that he has only earned \$2,500 since the petition date. The Debtor also states that he has not expended any funds since the petition date, with his monthly expenses being paid by the Debtor's son.

The Debtor has not identified the source of the \$2,500 he has earned since the petition date. If the Debtor obtained such monies from his business interests or from the use of his licenses, then such monies may be subject to the Assignment Order. If such monies are subject to the Assignment Order, then Creditor would own the rights to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

those monies. As noted above, such monies would not be property of the Debtor's estate and not subject to 11 U.S.C. § 363.

**V. CONCLUSION**

In light of the foregoing, the Court will deny the Motion. Creditor has not met his burden of establishing the validity, priority, or extent of his interest in any of the Debtor's assets that could constitute cash collateral pursuant to 11 U.S.C. § 363. To the extent that the Debtor has received after January 24, 2018 any monies from his business entities or from the use of his licenses, the Assignment Order provides that the right to payment of such monies is the Creditor's property, and therefore not property of the Debtor's bankruptcy estate.

The Debtor must submit the order within seven (7) days.

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

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 11, 2018**

**Hearing Room 301**

---

1:30 PM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#1.00** Debtor's Emergency motion for orders authorizing interim and final use of cash collateral

Docket 18

**Party Information**

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#1.00 Motion for relief from stay [AN]**

IDFIX, Inc.  
VS  
DEBTOR

fr. 4/18/18; 6/20/18

Docket 137

**Tentative Ruling:**

**Tentative Ruling from June 20, 2018**

Deny relief from the automatic stay.

In order to provide additional time for the chapter 7 trustee (the "Trustee") to determine whether he would proceed with the state court litigation, and for the parties to explore mediation of their dispute, the Court continued the prior hearing on this matter. The parties were instructed to file a status report no later than June 6, 2018.

On June 6, 2018, movant filed a unilateral status report [doc. 142]. Movant states that on April 26, 2018, the state court sustained movant's demurrer and gave the Trustee 10 days to file an amended complaint. As of the date of the status report, movant states that the Trustee has not done so. Movant further states that the state court set a trial date for the debtor's affirmative claims for February 19, 2019.

The unilateral status report is not supported by declaration or other evidence. If the statements in the unilateral status report are correct, it appears that the Trustee does not intend to pursue the debtor's claims against Movant in state court.

Even if mandatory abstention applies to the parties' state court litigation, mandatory abstention alone does not necessarily establish "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). In *Benedor Corp. v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.)*, 96 F.3d 346 (9th Cir. 1996), a chapter 11 debtor removed a creditor's state court breach of contract action against the debtor to bankruptcy court. The creditor moved for abstention, remand, and relief from the automatic stay, which

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

the bankruptcy court denied. The district court reversed the bankruptcy court, holding that because mandatory abstention applied, there was cause for relief from the automatic stay. With respect to cause for relief from the automatic stay, the Ninth Circuit Court of Appeals reversed the decision of the district court:

"[A] finding that mandatory abstention applies to the underlying state action does not preclude denial of relief from § 362's automatic stay. . . . [Section] 362(b) provides explicit exceptions to § 362(a)'s automatic stay. Pending state actions that are determined to be non-core proceedings are not listed among the explicit exemptions. Therefore, it is clear that Congress did not intend to provide an exception to the automatic stay for non-core pending state actions which are subject to mandatory abstention. In fact, Congress has made it clear that it intended just the opposite by providing that a decision to abstain under § 1334(c)(2) "shall not be construed to limit the applicability of the stay provided for by [§ 362] . . . ." 28 U.S.C. § 1334(c)(2)[.]

*Id.* at 352. The Ninth Circuit Court of Appeals found that the bankruptcy court had reasonably considered the following grounds in denying relief from stay: whether the creditor would file a proof of claim in the debtor's case, or waive its right to payment from the bankruptcy estate, and that judicial economy would be promoted by limiting duplicative litigation. As the Court of Appeals noted:

[t]he filing of a proof of claim by [creditor] must also be considered in determining whether cause exists for lifting the automatic stay. In holding that the automatic stay must be lifted, the district court ignored the filing of the proof of claim, instead focusing on its finding that the state court action was not within the bankruptcy court's core jurisdiction. We hold that the district court erred in doing so.

The allowance and disallowance of claims against the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Once [creditor] filed its proof of claim, it subjected its claim to the core jurisdiction of the bankruptcy court. It was within the sound discretion of the bankruptcy court to deny relief from the automatic stay.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

*Id.* at 353.

Here, on October 6, 2017, movant filed proof of claim 6-1 in the debtor's bankruptcy case. The filing of this proof of claim subjects movant's claim to the core jurisdiction of this Court, subject to payment under the Bankruptcy Code's distribution scheme along with other filed claims. Pursuant to *Conejo Enterprises*, this Court is within its sound discretion to deny movant's request for relief from the automatic stay, for the reason set forth in the Court's prior tentative ruling.

The Trustee must submit the order within seven (7) days.

**Tentative ruling from 4/18/18**

Deny.

**I. BACKGROUND**

Kandy Kiss of California, Inc. (the "Debtor") is a California corporation that was in the business of design, product development, wholesale manufacture, and sale of apparel to large retailers. IDFIX, Inc. ("Movant") produced fabric and garments for the Debtor.

In 2015, the Debtor and Movant had a dispute over certain garments that Movant produced for the Debtor. The Debtor refused to pay for the alleged nonconforming garments, which cost a total of \$2,462,097.88 [doc. 137, Exh. A]. On July 14, 2016, the Debtor filed in state court a complaint against Movant and three other defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "State Court Action") [doc. 137, Exh A]. On December 1, 2016, Movant filed a cross-complaint against the Debtor and three other cross-defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "Cross-Complaint") [doc. 137, Exh A].

On February 14, 2017, an involuntary petition was filed against the Debtor. The State Court Action was stayed pursuant to the automatic stay. On September 19, 2017, the order for relief was entered in the Debtor's case [doc. 63].

On March 15, 2018, Movant filed a motion for relief from the automatic stay to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

proceed with the Cross-Complaint against the Debtor in the State Court Action (the "Motion") [doc. 137]. In the Motion, Movant argues that the Court must abstain from hearing the State Court Action because mandatory abstention under 28 U.S.C. § 1334(c) constitutes cause for lifting the automatic stay. Movant also argues that relief from the automatic stay is proper using the multi-factor test from *In re Sonmax Indus., Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990).

On April 4, 2018, the chapter 7 trustee ("Trustee") filed an opposition to the Motion (the "Opposition") [doc. 139]. On April 11, 2018, Movant filed a reply to the Opposition [doc. 140].

**II. DISCUSSION**

**A. Mandatory Abstention**

28 U.S.C § 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Mandatory abstention under 28 U.S.C. § 1334(c)(2) requires that the following seven elements be met:

(1) A timely motion; (2) a purely state law question; (3) a non-core proceeding § 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists.

*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. B.A.P. 2001).

For the Court to be required to abstain, all seven elements of mandatory abstention

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

must be present. Here the Motion was timely filed and there is no independent basis for federal jurisdiction outside of Title 11 of the United States Code as the Cross-Complaint alleges purely state law questions. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise raise any bankruptcy issues or impede the Trustee's administration of the case. Moreover, the State Court Action was commenced in state court and the state court has jurisdiction over the State Court Action.

However, it is unclear whether the state court can timely adjudicate the State Court Action. *Compare In re Eastport Associates*, 935 F.2d 1071, 1078-79 (9th Cir. 1991) (holding that the state court could not timely adjudicate the matter where parties would have to start litigation over in state court); *and In re Smith*, 389 B.R. 902, 921 n. 18 (Bankr. D. Nev. 2008) (noting that "there can be no timely adjudication" where the bankruptcy court can hear the matter before the state court); *with Bowen Corp. v. Sec. Pac. Bank Idaho, F.S.B.*, 150 B.R. 777, 784 (Bankr. D. Idaho 1993) (finding the state court could adjudicate the matter much more quickly because a motion for summary judgment had already been filed and was pending before the action was removed to federal court). "[T]he party moving for abstention will bear the burden of demonstrating that a state court action can be timely adjudicated." *In re First All. Mortgage Co.*, 269 B.R. 449, 455 (C.D. Cal. 2001). There is no trial set in the State Court Action and few resources have been expended in preparation for a trial in the State Court Action [doc. 140]. The parties would need to prosecute the State Court Action from start to finish because it was stayed in the early stages of litigation. Movant has not provided any evidence that the State Court Action can be timely adjudicated. On the other hand, if necessary, this Court could estimate Movant's claim sooner than the state court would be able to fully adjudicate the State Court Action and liquidate Movant's claim. Accordingly, it does not appear that all elements for mandatory abstention have been met.

***B. Relief from the Automatic Stay***

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

*Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum 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 as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also Sonnax*, 907 F.2d at 1286 (listing factors). When applied to the pending Motion and case, the *Sonnax* factors do not appear to support relief from the automatic stay.

***Whether the relief will result in a partial or complete resolution of the issues***

This factor weighs against lifting the automatic stay. Allowing the State Court Action to proceed in state court would not allow immediate and complete resolution of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc.**

**Chapter 7**

dispute between Movant and the Debtor. The state court can adjudicate the claims and cross-claims between the parties; however, Movant would still need to file a proof of claim in the Debtor's bankruptcy case in order to receive a distribution from the Trustee.

***The lack of any connection with or interference with the bankruptcy case***

This factor weighs against lifting the automatic stay. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise deal with any bankruptcy issues. However, if the Trustee were required to litigate the State Court Action in a different forum, such litigation may impede the Trustee's administration of the case.

***Whether the foreign proceeding involves the debtor as a fiduciary***

The State Court Action does not involve the Debtor's conduct as a fiduciary.

***Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

The Trustee contends that Movant has not met its burden to show that extraordinary circumstances exist for deviating from the well-established bankruptcy claims resolution process. The Court agrees.

***Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It is unclear whether the Debtor's insurance carrier, if any, has paid for costs of defending the State Court Action.

***Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

Movant argues there is no prejudice because all creditors will get paid a pro-rata share. However, the cost of liquidating Movant's claim in the State Court Action, potentially without any reason for doing so, may decrease the amount of funds available for unsecured creditors. This factor weighs against lifting the automatic

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

9:30 AM

CONT... Kandy Kiss of California, Inc.  
stay.

Chapter 7

***Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c)***

At this time, it does not appear that any resulting judgment that Movant may obtain in the State Court Action would be subject to equitable subordination.

***The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

This factor weighs in favor of lifting the automatic stay. The Debtor is one of four cross-defendants in the State Court Action. If the Court lifted the automatic stay, it would minimize potentially duplicative litigation in two different forums.

***Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

This factor weighs against lifting the automatic stay, because the State Court Action has not progressed to the point where the parties are prepared for trial. The State Court Action was stayed at the early stages of litigation. The parties have not expended significant resources in the State Court Action that would go to waste if the Court denies the Motion.

***The impact of the stay on the parties and the "balance of the hurt."***

Entry of judgment in the State Court Action would prejudice the Debtor. However, the Court can prohibit any enforcement of the judgment against the Debtor or the Debtor's estate during the pendency of its bankruptcy case. Still, lifting the stay does not appear warranted here because the State Court Action is at a very early stage, and allowing the parties to litigate the State Court Action may impede the administration of the Debtor's estate.

Movant contends that the Court lifting the automatic stay will ensure a level playing field because the Trustee is currently free to prosecute the State Court Action, but Movant is prevented from doing so by the automatic stay. However, the Trustee has not determined whether he will prosecute any of the Debtor's affirmative claims. Because the Trustee is not presently prosecuting the State Court Action, there is no

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kandy Kiss of California, Inc. Chapter 7**

need at this time for the Court to level the playing field. Accordingly, the "balance of the hurt" weighs against lifting the automatic stay.

**III. CONCLUSION**

In light of the foregoing, Movant has not shown that mandatory abstention under 28 U.S.C. § 1334(c)(2) applies to the State Court Action. In addition, the *Sonnax* factors weigh against lifting the automatic stay. Movant has not shown sufficient cause under 11 U.S.C § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the Debtor.

Notwithstanding the foregoing, Movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 in the Debtor's bankruptcy case.

The Trustee must submit the order within seven (7) days.

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

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11432 Anusha Gerard Silva**

**Chapter 7**

**#2.00** Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

fr. 8/1/18; 8/22/18

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Anusha Gerard Silva

Represented By  
Henrik Mosesi

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10463 Shawn Adam Johnson and Taniesah Evans**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 8/8/18

Docket 43

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Shawn Adam Johnson

Represented By  
Joshua L Sternberg

**Joint Debtor(s):**

Taniesah Evans

Represented By  
Joshua L Sternberg

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Shawn Adam Johnson and Taniesah Evans**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#4.00** Motion for relief from stay [RP]

THE FOURTH AMENDED REVOCABLE LIVING TRUST OF  
KREKOR GARABET TCHAKIAN AND CHAKE TCHAKIAN  
VS  
DEBTOR

(31194 La Baya Dr #207)

fr. 8/22/18;

Docket 61

**Tentative Ruling:**

Deny. Movant is adequately protected based on an equity cushion, and movant has not demonstrated that the debtor lacks equity in the real property at issue.

The debtor must lodge the order within seven (7) days.

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#5.00** Motion for relief from stay [RP]

THE FOURTH AMENDED REVOCABLE LIVING TRUST OF  
KREKOR GARABET TCHAKIAN AND CHAKE TCHAKIAN  
VS  
DEBTOR

(31194 La Baya Dr #203)

fr. 8/22/18

Docket 62

**Tentative Ruling:**

Deny. Movant is adequately protected based on an equity cushion, and movant has not demonstrated that the debtor lacks equity in the real property at issue.

The debtor must lodge the order within seven (7) days.

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

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11729 Richard Philip Dages**

**Chapter 11**

**#6.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 8/1/18

Docket 6

**Tentative Ruling:**

**8/1/18 Ruling**

Grant on an interim basis and continue the hearing to **September 12, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed.

***The Debtor's Prior Cases***

Between 2000 and 2017, Richard Philip Dages (the "Debtor") filed the following cases:

Case No.	Chapter	Date Filed	Disposition
1:00-bk-17554-AG	7	8/18/2000	Dismissed on 9/8/2000 with 180-day bar for failure to file schedules, statements, and/or plan
1:01-bk-16615-AG	7	7/10/2001	Dismissed 7/26/2001 with 180-day bar for failure to file schedules, statements, and/or plan
1:12-bk-18250-AA	13	9/17/2012	Dismissed on 12/06/2012 arising from confirmation hearing

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

9:30 AM

CONT...

**Richard Philip Dagnes**

**Chapter 11**

1:13-bk-10055-AA	13	1/3/2013	Dismissed on 4/3/2013 for failure to make plan payments and/or appear at 341(a) meeting
1:14-bk-10331-AA	13	1/22/2014	Dismissed on 3/31/2014 for failure to make plan payments and/or appear at 341(a) meeting
1:15-bk-11761-VK	13	5/19/2015	Dismissed on 10/14/2015 arising from confirmation hearing
1:17-bk-13261-MT	13	12/6/2017	Dismissed on 3/29/2018 arising from confirmation hearing

On December 6, 2017, the Debtor filed his most recent case, 1:17-bk-13261-MT (the "Prior Case"), *in pro per*. In the Prior Case, the Debtor listed as his residence the real property located at 16815 Parthenia Street, Northridge, CA 91343 (the "Property"). (Doc. 1, at p. 2.) The Debtor listed the Property in his schedules with a value of \$800,000. (Doc. 19, at p. 5.) Nationstar/Mr. Cooper ("Creditor") was listed as the holder of claim secured by the Property, in the amount of \$1,173,249. (*Id.*, at p. 16.) The Debtor also listed monthly income of \$3,353 and monthly expenses of \$2,207, leaving net monthly income of \$1,146. (*Id.*, at p. 30.) In his amended chapter 13 plan filed in the Prior Case, the Debtor's proposed plan payment was \$212.50 per month. (Doc. 36, at p. 3.) On March 29, 2018, the Prior Case was dismissed because the Debtor exceeded the chapter 13 debt limits set forth in 11 U.S.C. § 109(e) [doc. 38]. (See also Declaration of Richard Philip Dagnes, doc. 6, ¶ 4.)

***The Debtor's Pending Chapter 11 Case***

On July 10, 2018, the Debtor filed a voluntary chapter 11 petition, commencing the pending case. In his petition, the Debtor lists his residence as 13350 Dyer Street, Sylmar, CA 91342. The Debtor lists the Property in his schedules as having a value of \$810,000. (Doc. 1, at p. 16.) Creditor is listed as the holder of claim secured by the Property, in the amount of \$1,400,000. (*Id.*, at p. 24.) In his pending case, the Debtor's alleged monthly income is \$11,740.33 and his alleged monthly expenses are \$10,060, leaving net monthly income of \$1,680.33.

On July 11, 2018, the Debtor filed the pending motion to continue the automatic stay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Richard Philip Dages**

**Chapter 11**

in his case (the "Motion") [doc. 6]. Through the Motion, the Debtor seeks to continue the automatic stay as to the Property as to all creditors. In support of the Motion, the Debtor alleges that the Property is a rental property, and that he will be using the rents to fund a chapter 11 plan. The Debtor intends to file a motion to use cash collateral generated from the Property. (Declaration of Richard Philip Dages, doc. 6, ¶¶ 5-7.)

On July 18, 2018, Creditor filed a timely opposition (the "Opposition") [doc. 10]. No declaration was attached to the Opposition. Creditor argues that the Debtor filed the pending case in bad faith to delay a foreclosure sale. There has not been a substantial change in the Debtor's financial condition since the filing of the last case. The Debtor no longer lives in the property at issue, which is being rented out to circumvent 11 U.S.C. § 1123(b)(5). Creditor is the only secured creditor listed in the Debtor's schedules, and six unsecured creditors are listed. The Debtor's prior schedules are inconsistent with his current schedules, and the Debtor appears to have "squared away" his income to provide appropriate net income. The Debtor has filed a lawsuit against Creditor but has not scheduled the lawsuit. The Debtor's latest bankruptcy case was filed to delay foreclosure on a note that has been contractually due for 8 years. There would be no prejudice to the Debtor if the Motion is denied because there is no equity in the Property.

On July 25, 2018, the Debtor filed a timely reply [doc. 16]. The Debtor contends that he moved out of the Property because it is being remodeled. Only 50% of the Property is being rented because that is the part that is not under construction. The present case was filed in good faith because the Debtor has obtained chapter 11 counsel and intends to reorganize through a chapter 11 plan. The Debtor's prior case was dismissed because the Debtor exceeded the chapter 13 debt limit. The Debtor has amended his schedules to reflect the lawsuit against Creditor. According to the Debtor, the other issues raised by Creditor can be dealt with during the plan confirmation process.

In light of the foregoing, the Court will grant the Motion on an interim basis up to the date of the continued hearing, provided that **no later than August 15, 2018**, the Debtor (i) tenders his August 2018 deed of trust payment to Creditor in the amount of \$4,200 (as stated in his current schedule J) as to the Property. **No later than August 29, 2018**, the Debtor must file a declaration to demonstrate that he made this payment. **No later than August 8, 2018**, the Debtor must also file and serve notice of the continued hearing on *all* creditors and provide written notice that any responses to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Richard Philip Dages**

**Chapter 11**

Motion must be filed no later than August 29, 2018.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Richard Philip Dages

Represented By  
Onyinye N Anyama



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11914 William G Hill**

**Chapter 7**

**#7.00** Motion for relief from stay [AN]

UNITED STATES TRUSTEE  
VS  
DEBTOR

Docket 9

**\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 9/4/18 [Dkt.34]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

William G Hill

Represented By  
Gary S Saunders

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10096 Alexander Eshaghian**

**Chapter 13**

**#8.00** Motion for relief from stay [AN]

MICHELE BIDINGER  
VS  
DEBTOR

Docket 78

**Tentative Ruling:**

Deny, for the reasons discussed below.

**I. BACKGROUND**

On January 13, 2016, Alexander Eshaghian ("Debtor") filed a voluntary chapter 13 petition. On June 24, 2016, Debtor's chapter 13 plan was confirmed [doc. 40]. Debtor is the owner of a medical office that has several employees. One of those employees was Michele Bidinger ("Movant").

On December 18, 2017, Movant filed a complaint with the Department of Fair Employment and Housing (the "DFEH") against Debtor for claims that allegedly arose postpetition [Declaration of Gary Kurtz ("Kurtz Decl.", doc. 78)]. Movant was unaware of Debtor's bankruptcy petition at the time she filed the claim with the DFEH [Kurtz Decl.].

On August 8, 2018, Movant filed a *Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "Motion") [doc. 78]. On August 29, 2018, Debtor filed an opposition to the Motion [doc. 84].

**II. JUDICIAL STANDARD**

11 U.S.C. § 362(a) provides, in relevant part:

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,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Alexander Eshaghian**

**Chapter 13**

operates as a stay, *applicable to all entities*, of—

(1) the commencement or continuation, including the issuance or employment 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;

. . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate . . .

(Emphasis added.)

Under 11 U.S.C. § 362(d)(1), a court may grant relief from the automatic stay "for cause."

### **III. DISCUSSION**

The automatic stay bars the commencement or continuation of any proceeding against a debtor based on a claim that arose prepetition. 11 U.S.C. § 362(a)(1). Here, Movant alleges that all claims arose postpetition. Accordingly, the automatic stay does not prevent Movant from proceeding to liquidate her claim against Debtor in the DFEH.

Notwithstanding the foregoing, the automatic stay in Debtor's case bars "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). The automatic stay also bars "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). Although Movant may proceed in DFEH against Debtor to liquidate her postpetition claim, the automatic stay prevents Movant from enforcing any judgment obtained in state court against property of Debtor's estate.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Alexander Eshaghian  
IV. CONCLUSION**

**Chapter 13**

As noted above, the automatic stay does not bar Movant from proceeding against Debtor in the DFEH on account of her postpetition claim. However, the automatic stay bars enforcement of any judgment obtained in state court against property of Debtor's estate.

Accordingly, Movant may proceed under applicable nonbankruptcy law to enforce her remedies to proceed to final judgment in state court, provided that the stay remains in effect with respect to enforcement of any judgment against Debtor or property of Debtor's bankruptcy estate.

Deny request for annulment as moot. For the reasons discussed above, the automatic stay did not apply to the filing of DFEH complaint.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit an order within seven (7) days.

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

**Debtor(s):**

Alexander Eshaghian

Represented By  
Richard T Baum

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:16-10470 Steven William Tam and Boriana Blagoeva Tam**

**Chapter 13**

**#9.00** Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 39

**Tentative Ruling:**

The Court will continue this hearing to **October 17, 2018 at 9:30 a.m.** The movant did not attach the court-mandated form F 9013-3.1.1.PROOF.SERVICE to the motion. On or before **September 19, 2018**, the movant must file and serve the motion on the debtors, the debtors' attorney, the chapter 13 trustee and the United States Trustee. The movant must execute the proof of service in accordance with the requirements of Local Bankruptcy Rule 9013-3.

Appearances on September 12, 2018 are excused.

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

**Debtor(s):**

Steven William Tam

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Boriana Blagoeva Tam

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10323 Ralph Pagan**

**Chapter 13**

**#10.00** Motion for relief from stay [PP]

KINECTA FEDERAL CREDIT UNION  
VS  
DEBTOR

Docket 28

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Ralph Pagan

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

9:30 AM

1:17-13160 Shalva Shalom Krihali

Chapter 13

#11.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

Docket 49

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shalva Shalom Krihali**

**Chapter 13**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13626 Dwayne Rice Corbitt**

**Chapter 13**

**#12.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 103

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Dwayne Rice Corbitt**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11801 Rudex Broadcasting Limited Corp.**

**Chapter 11**

**#13.00** Motion for relief from stay [UD]

LUIS CRESCITELLI  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Rudex Broadcasting Limited Corp.

Represented By  
Michael D Kwasigroch

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:17-01017 Weil v. Cazares et al

- #14.00** Pretrial conference re: first amended complaint for:
1. Injunction to prevent infringement of trademark;
  2. Avoidance and recovery of post petition transfers;
  3. Conversion;
  4. Breach of fiduciary duty;
  5. Aiding and abetting breach of fiduciary duty and conversion;
  6. Turnover; and
  7. Accounting and payment for use and exploitation of trademark

fr. 4/19/17(stip); 6/21/17(stip); 8/23/17; 11/8/17; 11/15/17; 3/14/18

Docket 36

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 1/23/19 at 1:30 PM [Dkt.85]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Ian Landsberg

**Defendant(s):**

Dean Albert Maury Cazares

Pro Se

Burton C. Bell

Pro Se

Scott Koenig

Pro Se

Fear Campaign, Inc.

Pro Se

Oxidizer, Inc.

Pro Se

Stanley Vincent

Pro Se

**Plaintiff(s):**

Diane C. Weil

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Dean Albert Maury Cazares**

**Chapter 7**

C John M Melissinos

**Trustee(s):**

Diane Weil (TR)

Represented By

C John M Melissinos

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#15.00** Motion by plaintiff to substitute John Van Dyke as defendant

fr. 8/15/18

Docket 55

**Tentative Ruling:**

Unless an appearance is made, the Court will continue this hearing to **1:30 p.m. on November 21, 2018.**

Appearances are excused on September 12, 2018.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#16.00** Plaintiff's motion to substitute Helayne Muennichow  
as Defendant

fr. 7/18/18; 8/15/18

Docket 45

**Tentative Ruling:**

Unless an appearance is made, the Court will continue this hearing to **1:30 p.m. on  
November 21, 2018.**

Appearances are excused on September 12, 2018.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#17.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17; 2/14/18; 4/4/18; 5/9/18; 8/9/18; 8/15/18

Docket 1

**Tentative Ruling:**

Unless an appearance is made, the Court will continue this status conference to **1:30 p.m. on November 21, 2018.**

Appearances are excused on September 12, 2018.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #18.00** Status conference re: complaint
- 1) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)]
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17; 5/9/18(stip);

Docket 1

**Tentative Ruling:**

Unless an appearance is made, the Court will continue this hearing to **1:30 p.m. on November 21, 2018**. The chapter 7 trustee must file a status report no later than **November 7, 2018** and update the Court on the status of the parties' global mediation.

Appearances are excused on September 12, 2018.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

Helayne Muennichow

Represented By  
Gary A Kurtz

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan  
Reagan E Boyce  
Richard Burstein

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #19.00** Pretrial conference re complaint
- 1) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)]
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17; 5/9/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order ent 8/1/18 approving stip to cont to  
1/9/19 at 1:30 pm**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

Helayne Muennichow

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#20.00**      Status conference re: complaint for interpleader

Docket      1

**Tentative Ruling:**

The parties must complete and lodge form order F7067-1.1.ORDER.REGISTRY.FUND, located under the Local Bankruptcy Rules Forms tab on the Court's website at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov). The parties must complete Section 1 of the form, titled "Deposits," and check the box next to Section C.ii., which relates to interpleader funds. Upon the parties' lodgment of this form order, the Clerk of Court will process the funds in accordance with Local Bankruptcy Rule 7067-1.

Unless an appearance is made, the Court will continue this hearing to **1:30 p.m. on November 21, 2018.**

Appearances are excused on September 12, 2018.

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

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By  
Richard Burstein

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Hermann Muennichow**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#21.00** Pretrial conference re complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18; 5/16/18; 6/20/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 8/17/18 approving stip to cont  
to 11/7/18 at 1:30 pm**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#22.00** Status conference re: Amended complaint for nondischargeability  
11 U.S.C. 523a (2) debt obtained through fraud, embezzlement  
and false pretenses

Docket 14

**Tentative Ruling:**

The plaintiff states in his status report [doc. 23] that default has been entered against the defendant. This is inaccurate; the docket reflects that the Clerk of Court entered a notice that default *has not* been entered [doc. 22]. Given that the defendant has timely filed a motion to strike and/or a motion to dismiss [doc. 19], the Court will not entertain a motion for default judgment at this time.

The hearing on the defendant's motion to dismiss has been set for **October 31, 2018 at 2:30 p.m.** As such, the Court will continue this status conference to be held at the same time and date. The parties indicate in their unilateral status reports [docs. 20, 23] that they have not met and conferred in accordance with Local Bankruptcy Rule 7026-1. If the litigation will proceed - following the Court's ruling on the motion to dismiss - the parties must meet and confer in accordance with LBR 7026-1.

Appearances are excused on September 12, 2018.

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

**Debtor(s):**

Jorge Alberto Romero II	Pro Se
-------------------------	--------

**Defendant(s):**

Jorge Alberto Romero II	Pro Se
-------------------------	--------

**Plaintiff(s):**

Carlos Acevedo	Pro Se
----------------	--------



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

Adv#: 1:18-01078 United States Trustee for the Central District of v. Franckert Mendoza

**#23.00** Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. §§ 727(a)(3) and 727(a)(5)

Docket 1

**Tentative Ruling:**

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on November 14, 2018.**

If the plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **October 31, 2018.**

The plaintiff's appearance on September 12, 2018 is excused.

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

**Debtor(s):**

Francois E. Franckaert Mendoza	Represented By Elena Steers
--------------------------------	--------------------------------

**Defendant(s):**

Francois Franckert Mendoza	Pro Se
----------------------------	--------

**Plaintiff(s):**

United States Trustee for the Central	Represented By Russell Clementson
---------------------------------------	--------------------------------------

**Trustee(s):**

Amy L Goldman (TR)	Pro Se
--------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#24.00** Defendant Darin Davis' Motion for Attorney's Fees

Docket 228

**Tentative Ruling:**

Grant in part and continue for supplemental disclosures.

**I. BACKGROUND**

On June 2, 2004, Asphalt Professionals, Inc. ("Plaintiff"), as the subcontractor, and T.O. IX, LLC ("T.O."), as the contractor, entered into a subcontract agreement (the "Agreement"). Declaration of Alan W. Forsley ("Forsley Declaration"), ¶ 3, Exhibit 1. In relevant part, the Agreement provides:

ATTORNEYS' FEES: In the event that Contractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Subcontractor by third parties in which Contractor is joined as a party or interpleads, whether the same proceeds to judgment or not, Subcontractor agrees to pay to Contractor reasonable attorneys' fees. In the event that Subcontractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Contractor by third parties in which Subcontractor is joined as a party or interpleads, whether the same proceeds to judgment or not, Contractor agrees to pay to Subcontractor reasonable attorneys' fees. The parties' covenants set forth in this Paragraph 23 shall survive and be enforceable following termination of this Agreement.

Agreement, ¶ 23.

On September 29, 2005, after T.O. did not pay Plaintiff for all of Plaintiff's work on a project, Plaintiff sued T.O., Darin Davis ("Defendant") and others in state court (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

"State Court Action"). *See* Court's Decision [doc. 219], p. 7. In the State Court Action, Plaintiff asserted breach of contract, foreclosure on a mechanic's lien, fraud, conspiracy and quantum meruit. *Id.*

The trial court trifurcated the State Court Action into three trial phases, with the first phase involving Plaintiff's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. *Id.* On October 29, 2010, after a bench trial, the state court entered an interlocutory judgment as to the first phase (the "Phase One Judgment"). *Id.* After entry of the Phase One Judgment, Plaintiff filed a motion for an award of attorneys' fees, and the trial court awarded Plaintiff \$1.65 million in attorneys' fees. *Id.*, p. 8. An appellate court subsequently upheld the trial court's award of fees. *Id.*

The second phase of the State Court Action involved Plaintiff's alter ego claims. *Id.* On December 23, 2011, the state court issued a statement of decision after phase two of trial (the "Phase Two Decision"). *Id.* In the Phase Two Decision, the state court found that T.O., among other entities, was an alter ego of Defendant. *Id.* As a result, the state court held that the liability of the Phase One Judgment and the award of attorneys' fees, as well as any other or future orders awarding damages, punitive damages, attorneys' fees and/or costs to Plaintiff against T.O. would be extended to Defendant, among others. *Id.* An appellate court also upheld the Phase Two Decision. *Id.*, p. 9.

On June 26, 2013, Plaintiff filed an Acknowledgment of Satisfaction of Judgment (the "Satisfaction of Judgment") in state court. *Id.* Through the Satisfaction of Judgment and the stipulation attached thereto, Plaintiff acknowledged that the Phase One Judgment and any attorneys' fees awarded to date had been paid in full. *Id.*

On June 15, 2010, Defendant filed a voluntary chapter 7 petition. On August 16, 2010, Plaintiff filed a complaint against Defendant (the "Complaint"), objecting to Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2) and (a)(4) and requesting nondischargeability of any debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A). In the Complaint, Plaintiff alleged:

Defendant falsely represented that he intended to act as a licensed general contractor for a proposed building project in Thousand Oaks.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

Defendant also falsely represented that he and various unlicensed entities he owned or controlled were "owner/builders" of the proposed building project, rather than licensed general contractors. From 2003 until 2005, Defendant and the unlicensed entities proceed to construct the subject real property. Defendant knew that, under California law, only a properly licensed general contractor could construct, or contract with other to construct, the subject real property.

In 2004, Defendant and entities he owned and controlled knowingly entered into the Agreement with Plaintiff for labor, materials and services without disclosing that Defendant and the entities he owned and controlled were unlicensed contractors and without disclosing that the construction engineering, surveying, plans and drawings provided to Plaintiff were based on an inaccurate and incomplete 40-year-old "as built" survey. Because of the incomplete and inaccurate information provided to Plaintiff, Plaintiff was unable to construct a portion of the curbs, gutters and public roadways at the subject real property.

Rather than disclose the truth about the survey, Defendant (a) intentionally terminated the Agreement; (b) refused to pay Plaintiff for past due labor, materials and services provided to date; (c) refused to pay Plaintiff the agreed upon amount in the Agreement; (d) engaged the services of other sub-contractors to remove and replace the portion of the curbs, gutters and public roadways that Plaintiff could not construct; and (e) back-charged Plaintiff for an amount in excess of the cost Defendant incurred to construct the improvements.

Had Defendant disclosed that the subject real property was constructed in violation of California law or that the plans provided to Plaintiff were inaccurate or incomplete, Plaintiff would not have entered into the Agreement. Through Defendant's express and implied representations, Defendant was able to deceive Plaintiff into entering into the Agreement with T.O. As a result, Plaintiff requests a nondischargeable judgment against Defendant in the amount of \$1 million plus interest accrued on said amount to the date of payment, plus the costs of this proceeding and attorney's fees incurred by

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

Plaintiff in this adversary proceeding.

Complaint, pp. 2-11. Aside from these allegations, the Complaint also included allegations that Defendant did not accurately complete his bankruptcy schedules and statements and that, as a result, Defendant should be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) and (a)(4). Complaint, pp. 7-10. On September 17, 2010, Defendant filed an answer to the Complaint (the "Answer") [doc. 3]. In the Answer, Defendant asserted the following affirmative defenses: (a) Failure to State a Claim; (b) Statutes of Limitations; (c) that Plaintiff's own negligent acts or omissions led to any damage suffered by Plaintiff; (d) that third parties caused any damage to Plaintiff; (e) Waiver; (f) Estoppel; (g) Consent; and (h) Laches.

The Court bifurcated this proceeding, such that the Court first heard Plaintiff's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on Plaintiff's claims under 11 U.S.C. § 727 [doc. 113]. The Court initially stayed the 11 U.S.C. § 523 portion of this adversary proceeding to await conclusion of the State Court Action. On April 19, 2017, nearly seven years after Defendant filed his chapter 7 petition, Plaintiff and Defendant appeared for a status conference. At that time, the Court informed the parties that it would no longer delay prosecution of this adversary proceeding until the State Court Action was resolved.

On August 31, 2017, the parties filed a joint pretrial stipulation (the "JPS") [doc. 140]. In the JPS, the parties agreed that the Court would try the following issues of law:

- (a) Whether or not, by reason of the false and misleading express and implied representations of Defendant and by reason of Plaintiff's reliance upon the truthfulness of the same, the obligation owed to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).
- (b) Whether or not, as a result of the intentionally false and misleading representations of Defendant, Plaintiff's Claim in the amount of \$1,130,951.42 is allowed and nondischargeable.
- (c) Whether Defendant had a legal duty to disclose to Plaintiff that T.O. was not a California licensed general contractor.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

- (d) Whether Defendant had a legal duty to disclose to Plaintiff that entities in control of the subject project were not licensed general contractors.
- (e) Whether Defendant had a legal duty to disclose to Plaintiff the age of any plans given to Plaintiff.
- (f) Whether Defendant had a legal duty to disclose whether any plans given to Plaintiff were inaccurate.
- (g) Whether Plaintiff is bound by the allegations in the Complaint and may not introduce evidence contrary to the allegations therein.
- (h) Whether Plaintiff has standing to assert the causes of action in the Complaint/adversary proceeding.
- (i) Whether any alleged statement or omission made by Defendant to Plaintiff is a material fact.

JPS, pp. 16-17.

On November 6, 2017, Plaintiff filed a motion for summary judgment ("Plaintiff's MSJ") [doc. 165]. On the same day, Defendant filed a motion for summary judgment ("Defendant's MSJ") [doc. 162]. On February 28, 2018, the Court entered an order granting summary adjudication in favor of Plaintiff only on the following issue: that nondisclosure of T.O.'s status as an unlicensed entity would be material (the "MSJ Order") [doc. 208]. The Court otherwise denied both Plaintiff's MSJ and Defendant's MSJ.

On February 6, 2018, the Court entered an order approving the JPS (the "Pretrial Order") [doc. 203]. In the Pretrial Order, the Court noted that "[i]n addition to determining, based on 11 U.S.C. § 523(a)(2)(A), the nondischargeability of any debt owed by [Defendant] to [Plaintiff], this Court also will determine *the amount of any nondischargeable debt payable to [Plaintiff], i.e., any damages arising from fraud.*" Pretrial Order, p. 2 (emphasis in Pretrial Order).

On April 23 and 24, 2018, the Court held trial on Plaintiff's claim under 11 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

523(a)(2)(A). At trial, the Court made several findings regarding the Agreement, including findings regarding how T.O. was characterized in the Agreement, how certain terms were defined, which contractor's license number was included in the Agreement, the nature of oral communications between the parties regarding licensure at the time the parties entered into the Agreement and the review of the as-built survey provided with the Agreement. Court's Decision, pp. 3-5. Plaintiff testified at trial that it would not have entered into the Agreement had Plaintiff known about T.O.'s license status or the age of the as-built survey. *Id.*, p. 17.

On June 13, 2018, the Court issued a decision after trial (the "Court's Decision") [doc. 219]. In the Court's Decision, the Court held that Plaintiff did not establish that Defendant made oral or written representations to Plaintiff regarding T.O.'s license status or the age of the as-built survey before the parties entered into the Agreement. Court's Decision, p. 14. The Court also held that any omission by Defendant regarding the license status of T.O. or the age of the as-built survey was not fraudulent. *Id.*

On June 29, 2018, Defendant filed a motion requesting attorneys' fees and costs pursuant to Cal. Civ. Code § 1717 and/or Cal. Code of Civ. Proc. ("CCP") §§ 1021 and 1032 (the "Motion") [doc. 228]. On August 28, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 238]. In the Opposition, Plaintiff requests sanctions against Defendant pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9011. On September 5, 2018, Defendant filed a reply to the Opposition [doc. 239].

## **II. ANALYSIS**

In federal courts, there is generally no right to attorney's fees unless authorized by contract or by statute. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257, 95 S.Ct. 1612, 1621, 44 L.Ed.2d 141 (1975) ("Other recent cases have also reaffirmed the general rule that, absent statute or enforceable contract, litigants pay their own attorneys' fees."). In *Cohen v. de la Cruz*, 523 U.S. 213, 218–20, 118 S.Ct. 1212, 1216–17, 140 L.Ed.2d 341 (1998), the Supreme Court of the United States interpreted the discharge exceptions under 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(9) to encompass all liability arising on account of a debtor's fraudulent conduct, including attorneys' fees and costs to which the creditors were entitled under



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

state law. As such, "the determinative question for awarding attorney's fees is whether the creditor would be able to recover the fee outside of bankruptcy under state or federal law." *In re Hung Tan Pham*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000). Here, Defendant cites Cal. Civ. Code § 1717 and CCP §§ 1021 and 1032 as the operative state statutes.

***A. Cal. Civ. Code § 1717(a)***

Pursuant to Cal. Civ. Code § 1717(a)—

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

"Civil Code § 1717 makes an otherwise unilateral contractual obligation to pay attorney's fees into a reciprocal one in an action on the contract but Civil Code § 1717 is not applicable in a tort action." *In re Bic Pho*, 2016 WL 1620375, at \*3 (Bankr. N.D. Cal. Apr. 20, 2016); *see also Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998) (finding that § 1717 applies only to fees incurred to litigate contract claims); *and In re Deuel*, 482 B.R. 323, 328 (Bankr. S.D. Cal. 2012) (same).

To obtain fees pursuant to Cal. Civ. Code § 1717(a), "[t]hree conditions must be met..." *In re Penrod*, 802 F.3d 1084, 1087 (9th Cir. 2015).

First, the action in which the fees are incurred must be an action "on a contract," a phrase that is liberally construed. Second, the contract must contain a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must be the party who "prevail[ed] on the contract," meaning (with exceptions not relevant here) "the party who recovered a greater relief in the action on the contract." Cal. Civ.Code § 1717(b)(1).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

*Id.*, at 1087-88 (internal citation omitted). "Under California law, an action is 'on a contract' when a party seeks to enforce, or avoid enforcement of, the provisions of the contract." *Id.*, at 1088.

Although past interpretations of the phrase "action on a contract" have been murky, two recent decisions by the Ninth Circuit Court of Appeals shed some light on which disputes fall within the purview of Cal. Civ. Code § 1717(a). In *Penrod*, prepetition, the debtor and a lender entered into an installment sale contract when the debtor purchased a vehicle. *Penrod*, 802 F.3d at 1086. The contract granted the lender a security interest in the vehicle. *Id.* The debtor then filed a chapter 13 petition and, in her proposed chapter 13 plan, bifurcated the lender's claim into a secured claim in the amount of \$16,000 and an unsecured claim in the amount of \$10,000. *Id.* The lender objected to the proposed chapter 13 plan, arguing that its entire claim should be treated as secured in accordance with the "hanging paragraph" below 11 U.S.C. § 1325(a)(9), which prohibits bifurcation of claims that are secured by a "purchase money security interest" in a vehicle. *Id.* Eventually, the bankruptcy court decided that the lender was entitled to a \$19,000 secured claim and a \$7,000 unsecured claim. *Id.*, at 1087. After an appeal by the lender, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed the bankruptcy court's ruling. *Id.*

The debtor then filed a motion to recover attorneys' fees she incurred opposing the lender's objection to confirmation of her chapter 13 plan. *Id.* The debtor relied on a provision in the installment sale contract which read, "You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts." *Id.* Pursuant to this language, the debtor argued she was entitled to attorneys' fees under Cal. Civ. Code § 1717(a). *Id.* The bankruptcy court disagreed, holding that the action was not an action "on a contract" because the action at issue in *Penrod* turned on a question of federal bankruptcy law. *Id.* The district court affirmed the bankruptcy court. *Id.* The Ninth Circuit Court of Appeals disagreed, explaining that:

[The lender] sought to enforce the provisions of its contract with [the debtor] when it objected to confirmation of her proposed Chapter 13 plan. The plan treated [the lender's] claim as only partially secured, but [the lender] insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

contract—in particular, the provision in which [the debtor] granted a security interest in her Taurus to secure "payment of all you owe on this contract." (Had the contract not granted [the lender] a security interest in the car, [the lender] could not have asserted a secured claim for *any* amount. *See* 11 U.S.C. § 506(a).) The security interest conveyed by the contract covered not just the funds [the debtor] borrowed to pay for the Taurus, but also the funds she borrowed to refinance the negative equity in the Explorer. The sole issue in the hanging-paragraph litigation was whether this provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude the negative-equity portion of the loan. *See In re Penrod*, 611 F.3d at 1159–61 & n. 2. By prevailing in that litigation, [the debtor] obtained a ruling that precluded [the lender] from fully enforcing the terms of the contract.

*Id.*, at 1088. On this analysis, the Court of Appeals believed the objection to the debtor's confirmation of her chapter 13 plan qualified as an "action on a contract" for purposes of Cal. Civ. Code § 1717(a). *Id.*

The Court of Appeals believed the bankruptcy court's and district court's interpretation of Cal. Civ. Code § 1717(a) was too narrow. *Id.* Those courts had concluded that Cal. Civ. Code § 1717(a) "applies only if the party defeats enforcement under non-bankruptcy law" and, because the debtor had prevailed under bankruptcy law, Cal. Civ. Code § 1717(a) did not apply. *Id.* The Court of Appeals held that California law did not prescribe any such limitation to Cal. Civ. Code § 1717(a). *Id.*, at 1089.

After *Penrod*, the Ninth Circuit Court of Appeals issued a decision further clarifying the boundaries of Cal. Civ. Code § 1717(a). *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016). In *Bos*, the debtor was an employer obligated to make payments to certain employee pension funds administered by the Board of Trustees in accordance with trust agreements. *Id.*, at 488. The debtor failed to make the requirement payments and, as a result, signed a promissory note agreeing to make monthly contributions to the funds and personally guaranteeing the payments. *Id.* The debtor was unable to make these payments. *Id.* As such, after the Board of Trustees sued the debtor, an arbitrator ruled the debtor had violated the agreements and a California Superior Court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

confirmed the arbitration award in a judgment. *Id.*

Around this time, the debtor filed a chapter 7 petition. *Id.* Subsequently, the Board of Trustees filed an adversary proceeding requesting nondischargeability of the judgment pursuant to 11 U.S.C. § 523(a)(4). *Id.* The bankruptcy court held that the judgment was nondischargeable under 11 U.S.C. § 523(a)(4) because the debtor was a fiduciary under the Employee Retirement Income Security Act ("ERISA"). *Id.*, at 489. The district court affirmed. *Id.* On appeal, the Court of Appeals reversed, holding that the debtor was not a fiduciary under ERISA and that 11 U.S.C. § 523(a)(4) did not apply to the debtor. *Id.* The debtor then moved to recover attorneys' fees pursuant to Cal. Civ. Code § 1717 and, alternatively, under ERISA. *Id.*

The Court of Appeals first referenced several prior decisions by the BAP and California courts:

The California Supreme Court has explained that "section 1717 applies only to actions that contain at least one contract claim," and that "[i]f an action asserts both contract and tort or other noncontract claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." *Santisas*, 17 Cal.4th at 615, 71 Cal.Rptr.2d 830, 951 P.2d 399. Consistent with *Santisas*, we have previously held that a nondischargeability action is "on a contract" within section 1717 if "the bankruptcy court needed to determine the enforceability of the ... agreement to determine dischargeability." *In re Baroff*, 105 F.3d 439, 442 (9th Cir.1997).

The Bankruptcy Appellate Panel of the Ninth Circuit has held that *Santisas* and relevant Ninth Circuit cases establish not just a rule of inclusion, but also a rule of exclusion: that "if the bankruptcy court did *not* need to determine whether the contract was enforceable, then the dischargeability claim is *not* an action on the contract within the meaning of [California Civil Code] § 1717." *In re Davison*, 289 B.R. 716, 723 (9th Cir. BAP 2003) (emphasis added).

*Id.* The court then explicitly adopted the BAP's interpretation of Cal. Civ. Code § 1717, noting that the construction "accords with the common sense meaning of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

phrase ‘on a contract’ and finds ample support in our precedents." *Id.*, at 490. The *Bos* court then cited three prior decisions by the Court of Appeals that supported the BAP’s interpretation above. *Id.*

First, the Court of Appeals cited *In re Johnson*, 756 F.2d 738 (9th Cir. 1985), for the proposition that an action is not an action "on a contract" if "the action neither litigated the validity of the contract nor required the bankruptcy court to consider ‘the state law governing contractual relationships.’" *Bos*, 818 F.3d at 490 (citing *Johnson*, 756 F.2d at 740). "More broadly, [the Court of Appeals] instructed that when federal and not state law governs the substantive issues involved in the adversary proceeding, [the court] may not award attorney’s fees pursuant to a state statute." *Id.* (citing *Johnson*, 756 F.2d at 741).

Next, the court cited *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980), where the Court of Appeals had held that a nondischargeability action in bankruptcy was not "on a contract" under an Oregon fee-shifting statute identical to Cal. Civ. Code § 1717. "The reason, we later explained, was that ‘the bankruptcy court did not adjudicate the validity of the note in determining whether the debt was dischargeable,’ and so the note was merely ‘collateral to the non-dischargeability proceeding.’" *Bos*, 818 F.3d at 490 (citing *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (citing *Fulwiler*, 524 F.2d at 909-10)).

Finally, the Court of Appeals referenced *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996), where the court relied on *Baroff* and held that "a creditor’s ‘dischargeability claim [was] not an action on the contract,’ within the meaning of the contract itself, because ‘the bankruptcy court did not need to determine the enforceability of the ... agreement to determine dischargeability.’" *Bos*, 818 F.3d at 490 (quoting *Hashemi*, 104 F.3d at 1126).

Based on these authorities, the *Bos* court explained:

In light of our precedents, we are persuaded that the action underlying Bos's fee request—the nondischargeability proceeding that began in bankruptcy court—was not an action "on a contract" within the meaning of section 1717. As the parties agree, "[t]here was no ‘breach of contract’ claim in the Trust Funds' adversary complaint." The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

nondischargeability proceeding arose entirely under the federal Bankruptcy Code, and in no way required the bankruptcy court to determine whether or to what extent the Trust Agreements or the Note were enforceable against Bos, or whether Bos had violated their terms. Those questions had been answered in arbitration, and confirmed by a State Court; indeed, in the nondischargeability action Bos conceded that such contracts were valid and that he had breached them. The litigation from that point forward asked only whether federal bankruptcy law forbade Bos from discharging the debts everyone agreed he owed to the Funds. Such litigation is collateral to a contract rather than "on a contract," and as a consequence Bos may not use section 1717 to recover the fees he incurred in pursuing it.

*Id.* The *Bos* court also found that *Penrod* did not change the analysis and distinguished *Penrod* on the basis that, in *Penrod*, the central question presented to the court was whether the court should enforce a provision in the parties' agreement or whether the debtor could avoid enforcement in accordance with the Bankruptcy Code. *Id.*, at 490-91. In *Bos*, the nondischargeability issue did not present any issues regarding the validity or enforceability of the subject agreement. *Id.*, at 491.

After *Bos*, a bankruptcy court within the Ninth Circuit addressed the issue of whether a nondischargeability action under 11 U.S.C. § 523(a)(2)(A) may be considered an action "on a contract" for purposes of Cal. Civ. Code § 1717. *In re Zarate*, 567 B.R. 176 (Bankr. N.D. Cal. 2017). In *Zarate*, creditors initiated an adversary proceeding against the debtors alleging that the debtors "'misrepresented facts, concealed and failed to disclose' material facts in order to induce plaintiffs to enter into the" subject agreement. *Id.*, at 181. The creditors requested damages in the amount of \$1.34 million plus prejudgment interest, contractual attorneys' fees and costs. *Id.* Subsequently, the court entered a stipulated judgment through which the debtors agreed to a nondischargeable judgment in the amount of \$831,018.31. *Id.* The creditors then filed a motion for an award of attorneys' fees based on the parties' contract, which included a provision that stated: "In event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith." *Id.*, at

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**  
181-83.

**Chapter 7**

The *Zarate* court first noted that "under established California law, a tort claim does not 'enforce' a contract." *Id.*, at 184 (citing *Stout v. Turney*, 22 Cal.3d 718, 730 (1978); and *Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998)). Next, the court found that "the dischargeability of a debt under § 523(a)(2)(A) resolves a tort claim." *Id.* (citing *In re Candland*, 90 F.3d 1466, 1470 (9th Cir. 1996)). The court did not find persuasive the plaintiffs' arguments that the nondischargeability action could be interpreted as one "on the contract." *Id.* The court held that, unlike cases like *Penrod*, the court did not have to assess the enforceability of the subject agreement in *Zarate*:

Here, whether the APA or the 2009 Agreement were enforceable was never a question and the interpretation of these agreements was never an issue. Based on the above, this was not an action on a contract. The APA and the 2009 Agreement provided the context out of which this dispute arose, but this was not an action on a contract. Civil Code § 1717 does not provide a basis to award attorney's fees.

*Id.*, at 185. *See also In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980) (holding that the action was not "on the contract" where the bankruptcy court "did not adjudicate the validity of the note in determining whether the debt was dischargeable" and instead determined "that the debtors obtained the loan evidenced by the note through fraud"); *cf. In re Arciniega*, 2016 WL 455428 (B.A.P. 9th Cir. Feb. 3, 2016) (where the debtor used the subject agreement to support her defense and the bankruptcy court had to interpret a disputed phrase in the agreement in connection with an action under § 523(a)(2)(A) and (a)(6), the action was "on a contract"); and *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (finding an action was "on a contract" where "the bankruptcy court needed to determine the enforceability of the settlement agreement to determine dischargeability").

Here, as in *Bos*, the contract issues were previously decided by the state court, as set forth in the Phase One Judgment. This Court was presented with one issue: whether Defendant committed fraud in connection with the execution of the Agreement. To adjudicate this issue, the Court did not need to assess the validity or enforceability of any provision in the Agreement. Neither Plaintiff nor Defendant disputed any provision in the Agreement during the course of this adversary proceeding; the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Complaint focused on representations and omissions allegedly made by Defendant in connection with entering into the Agreement but did not dispute the validity of the Agreement. The Answer also did not raise any affirmative defenses that called into question any provision in the Agreement. As such, this case is more similar to *Bos*, *Zarate* and *Fulwiler*, and is easily distinguishable from the contract enforcement issues presented to the *Arciniega* and *Baroff* courts.

Although, unlike *Bos*, where the state court had liquidated all damages prior to the dischargeability action, Plaintiff did request this Court to liquidate the fraud damages on top of determining dischargeability of the debt, liquidation of damages did not prevent the *Zarate* court from holding that the action was a tort action, not one "on a contract." In fact, that Plaintiff requested monetary damages as opposed to, for example, rescission of the Agreement strengthens the Court's finding that this action was not an action "on a contract." In *Hardisty v. Moore*, 2015 WL 6671557 (S.D. Cal. Nov. 2, 2015), the court noted that, under California law, "[f]raud (in the form of intentional misrepresentation) may provide a basis for a remedy in either a tort action or in a contract action." *Hardisty*, 2015 WL 6671557 at \*3 (quoting *Star Pac. Invs., Inc. v. Oro Hills Ranch, Inc.*, 121 Cal.App.3d 447, 461 (Ct. App. 1981)). The court continued:

When a plaintiff contracts in reliance upon the fraud of a defendant, the plaintiff "may elect either the contract remedy, consisting of restitution based on rescission or the tort remedy, by affirming the contract and seeking damages." *Id.* Thus, "where the plaintiff's claim ... seeks rescission based on fraud, the courts have concluded such claim does sound in contract and permits the award of fees," *Super 7 Motel Assocs.*, 16 Cal.App.4th at 549, 20 Cal.Rptr.2d 193, but where a plaintiff seeks money damages for the fraud, courts have concluded such a claim does not sound in contract and no fee award is permitted, *In re Baroff*, 105 F.3d 439, 443 (9th Cir.1997). "An action to avoid or rescind an agreement because of fraudulent inducement ... is an action on a contract within the meaning of section 1717." *In re Baroff*, 105 F.3d at 443 (citing *Star Pac. Invs., Inc.*, 121 Cal.App.3d at 461, 176 Cal.Rptr. 546); *see also In re Penrod*, — F.3d —, 2015 WL 5730425, at \*3 (an action is "on a contract" when a party seeks to "avoid enforcement" of the provisions of the contract); *Exxess*



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

*Electronixx v. Heger Realty Corp.*, 64 Cal.App.4th 698, 710–11, 75 Cal.Rptr.2d 376 (1998) (an action "that seeks to establish the parties' rights under a contract is an action sounding in contract").

*Id.* Here, Plaintiff never requested rescission of the Agreement based on fraud. Rather, at all times, Plaintiff requested monetary damages. Given that this Court did not adjudicate any enforcement or validity issues related to the Agreement, and because Plaintiff requested tort damages, this action is not an action "on the contract" for purposes of Cal. Civ. Code § 1717.

***B. CCP §§ 1021 and 1032***

Although Defendant is not entitled to attorneys' fees pursuant to Cal. Civ. Code § 1717, Defendant is entitled to attorneys' fees through CCP § 1021 based on the language in the Agreement. Pursuant to CCP § 1021—

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

Pursuant to CCP § 1032(b)—

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Under CCP § 1033.5(a), the following items are allowable as costs pursuant to § 1032:

(10) Attorney's fees, when authorized by any of the following:

(A) Contract.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

(B) Statute.

(C) Law.

CCP "§ 1032(b) entitles a 'prevailing party' to 'recover costs' as a matter of right 'in any action or proceeding.' Costs may include attorney's fees when authorized by contract, even when the action is not 'on a contract.'" *In re Mac-Go Corp.*, 541 B.R. 706, 715 (Bankr. N.D. Cal. 2015) (citing CCP § 1033.5(a)(10)).

*i. The Language of the Agreement*

Here, the relevant provision in the Agreement states: "In the event that Contractor prevails in *any reference proceeding or court action arising out of this Agreement* or the enforcement or breach thereof...whether the same proceeds to judgment or not, Subcontractor agrees to pay to Contractor reasonable attorneys' fees." Agreement, ¶ 23 (emphasis added). If this language encompasses tort actions as well as contract actions, then Defendant, as the prevailing party (discussed below), is entitled to collect reasonable attorneys' fees from Plaintiff.

Several California courts have held that the phrase "arising out of" is broad enough to encompass both tort and contract actions. In *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 1341 (Ct. App. 1992), the plaintiffs filed suit against the defendants, alleging negligence, products liability, fraud and misrepresentation and breach of contract. *Xuereb*, 3 Cal.App.4th at 1341. The allegations in the complaint involved a real estate purchase agreement through which the defendants, a real estate broker and real estate agent, sold real estate to the plaintiffs. *Id.*, at 1340. In relevant part, the plaintiffs alleged that the defendants omitted information or made misstatements prior to the execution of the purchase agreement. *Id.*, at 1343. The purchase agreement included the following attorneys' fees provision: "Attorneys' Fees: If this Agreement gives rise to a lawsuit or other legal proceeding between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover actual court costs and reasonable attorneys' fees in addition to any other relief to which such party may be entitled." *Id.*

Eventually, the action went to trial on the theories of negligence, breach of fiduciary duty, concealment and misrepresentation, but not on breach of contract. *Id.*, at 1341.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

The jury returned a verdict in favor of the plaintiffs, who then moved for an award of attorneys' fees pursuant to the purchase agreement. *Id.* The trial court denied the plaintiffs' motion, holding that the plaintiffs were not entitled to attorneys' fees under Cal. Civ. Code § 1717. *Id.* The plaintiffs appealed. *Id.*

On appeal, the California appellate court first noted that Cal. Civ. Code § 1717 did not govern the issue of attorneys' fees because the action was not an action "on a contract" as required by Cal. Civ. Code § 1717. *Id.*, at 1342. Instead, the court found that the relevant statute was CCP § 1021, which allows for an award of attorneys' fees in tort actions if the language in the parties' agreement is broad enough to provide for such an award. *Id.* In assessing the language of the attorneys' fees provision in the purchase agreement, the court was faced with facts significantly analogous to the facts before the Court:

The critical question, under the language of the parties' attorney fees agreement, is whether respondents' lawsuit *arose from* the Purchase Agreement. Appellants argue that the phrase "[i]f this Agreement *gives rise to* a lawsuit or other legal proceeding" (our italics) must be interpreted in a transactional sense; that is, in the sense that the litigation has arisen from the entirety of the circumstances of the real estate transaction of which the Purchase Agreement was the defining statement. Respondents, on the other hand, contend that their dispute with appellants cannot be said to have arisen from the Purchase Agreement, because the alleged actions, omissions, or misstatements with which that dispute was concerned, all occurred prior to the execution of the Purchase Agreement. In short, respondents focus on the chronology of the events in relation to the actual execution of the Purchase Agreement, while appellants more broadly address the entire transaction, of which the Purchase Agreement was the written memorandum.

*Id.* The court held that the action could properly be regarded "as having arisen from" the purchase agreement even under the defendants' narrower interpretation of the language, because the purchase agreement provided for certain inspections after the signing of the agreement, which inspections were allegedly deficient and partly formed the basis of the plaintiffs' lawsuit against the defendants. *Id.*, at 1343-44.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

However, the court held that the plaintiffs' broader interpretation of the language was accurate:

In any case, we must apply the rule that words in a contract are to be understood in their usual sense. (Civ. Code, § 1644.) In our opinion, appellants' interpretation more fairly reflects the ordinary and usual sense of the phrase "gives rise to," which the parties agreed to in the Purchase Agreement. In ordinary popular speech, as well as in legal opinions, it is common to use the phrase "arises from" or "arises out of" in a far more general, transactional sense than is suggested by phrases such as "derives from" or "proximately caused by."

*Id.*, at 1344. The *Xuereb* court also believed this interpretation was strengthened by the circumstances under which the parties entered into the purchase agreement:

Appellants' interpretation is also buttressed by the interpretational principle that a contract must be understood with reference to the circumstances under which it was made and the matter to which it relates. (Civ. Code, § 1647.) The circumstances of the Purchase Agreement and the matter to which it related was a large real property transaction, in which the buyer and the seller made certain reciprocal agreements with respect to the inspection of the premises and a variety of contingencies which were supposed to take place prior to the close of escrow. It was out of these contingencies, or the alleged failure thereof, that the lawsuit arose. The attorney fees provision specifically included the "Agent" among the parties with respect to which disputes could arise that would trigger a right to attorney fees. In light of all these circumstances, we conclude that the phrase "gives rise to" must be interpreted expansively, to encompass acts and omissions occurring in connection with the Purchase Agreement and the entire transaction of which it was the written memorandum.

*Id.*

Several courts post-*Xuereb* have afforded the same broad interpretation to attorneys' fees provisions if the contract includes language that states attorneys' fees are awarded

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

when an agreement "gives rise to" an action or an action "arises out of" an agreement. For instance, in *Lerner v. Ward*, 13 Cal.App.4th 155 (Ct. App. 1993), the plaintiffs sued the defendants for falsely representing that the real property they purchased from the defendants could be subdivided. *Lerner*, 13 Cal.App.4th at 157. The purchase agreement included an attorneys' fees provision awarding attorneys' fees to the prevailing party on any action "arising out of the agreement." *Id.*, at 160. Although the complaint initially included causes of action for breach of contract and reformation, the court held trial only on the plaintiffs' fraud cause of action. *Id.* The jury returned a verdict in favor of the defendants, who then moved for an award of attorneys' fees. *Id.* The trial court denied the motion, holding that the fees were not recoverable in a tort action under Cal. Civ. Code § 1717. *Id.*, at 158. The defendants appealed the ruling. *Id.*

The appellate court agreed that the defendants were not entitled to attorneys' fees under Cal. Civ. Code § 1717 because the fraud action was not "on a contract." *Id.*, at 159. However, the court found that the defendants were entitled to fees pursuant to CCP § 1021. Citing the reasoning in *Xuereb*, the court held:

In the instant case, the clause in the contract concerning attorney fees was similar to the clause in the *Xuereb* case. The clause was not limited merely to an action on the contract, but to any action or proceeding arising out of the agreement. This included any action for fraud arising out of that agreement.

It is true when the Lerner voluntarily dismissed their contract cause of action before trial and proceeded only on a tort theory, they gave up the opportunity to obtain attorney fees pursuant to Civil Code section 1717. They still, however, had the opportunity to obtain attorney fees pursuant to Code of Civil Procedure section 1021. This is because the tort cause of action arose out of the written agreement. The Lerner alleged and tried to prove that the Wards, through their fraudulent representations, induced the Lerner to enter into an agreement to purchase the property.

*Id.*, at 160.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Notably, the California Supreme Court cited approvingly to *Xuereb* and *Lerner* in another action involving a real estate purchase agreement containing the following attorneys' fees provision: "In the event legal action is instituted by the Broker(s), or any party to this agreement, *or arising out of the execution of this agreement or the sale*, or to collect commissions, the prevailing party shall be entitled to receive from the other party a reasonable attorney fee to be determined by the court in which such action is brought." *Santisas v. Goodin*, 17 Cal.4th 599, 603 (1998) (emphasis added). The issues in *Santisas* were different, centering mainly on a "prevailing party" analysis, but the California Supreme Court, referencing *Xuereb* and *Lerner*, did note that the language in the agreement was broad enough to cover both contract and tort actions:

On its face, the provision embraces all claims, both tort and breach of contract, in plaintiffs' complaint, because all are claims "arising out of the execution of th[e] agreement or the sale." (See *Lerner v. Ward* (1993) 13 Cal.App.4th 155, 160–161, 16 Cal.Rptr.2d 486.) Plaintiffs do not argue otherwise. If a contractual attorney fee provision is phrased broadly enough, as this one is, it may support an award of attorney fees to the prevailing party in an action alleging both contract and tort claims: "[P]arties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract." (*Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1341, 5 Cal.Rptr.2d 154.)

*Id.*, at 405. See also *Zarate*, 567 B.R. at 183 (holding that provisions that limit collection of fees to actions to "enforce" or "interpret" an agreement do not give rise to tort actions, but "provisions with broader language – suits *arising from* or with respect to the subject matter or enforcement of a contract – have been held to extend to fees incurred in litigating tort claims") (emphasis added); *Maynard v. BTI Grp., Inc.*, 216 Cal.App.4th 984, 993 (Ct. App. 2013) ("Like provisions referring to any claim 'in connection with' a particular agreement, *or to any action 'arising out of' an agreement*, an attorney fee provision awarding fees based on the outcome of 'any dispute' encompasses all claims, whether in contract, tort or otherwise.") (emphasis added); and *Childers v. Edwards*, 48 Cal.App.4th 1544 (1996) (holding that attorneys' fees provision stating that "any legal action, proceeding or arbitration *arising out of*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

*this agreement*" would provide the prevailing party to reasonable attorneys' fees encompasses tort actions) (emphasis added).

Here, like in *Lerner*, this Court adjudicated Plaintiff's fraud claim under 11 U.S.C. § 523(a)(2)(A). Because the Court only tried a tort claim, Defendant is not entitled to attorneys' fees under Cal. Civ. Code § 1717, as explained above. However, as in *Xuereb* and *Lerner*, the language in the Agreement is broad enough to encompass this action. The parties' Agreement explicitly provides for attorneys' fees in "any reference proceeding or court action *arising out of this Agreement*." Agreement, ¶ 23 (emphasis added). The "arising out of" language in the Agreement mirrors the language in the attorneys' fees provision in *Lerner* and is the exact same phrase held by several courts to be broad enough to encompass tort actions.

The crux of Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) was that Defendant made material misrepresentations and omissions on which Plaintiff relied prior to execution of the Agreement. A necessary element of Plaintiff's fraud theory was that Plaintiff would not have entered into the Agreement had Plaintiff been aware of certain facts prior to execution of the Agreement. Both *Xuereb* and *Lerner* held that the fraudulent inducement allegations at issue in their cases arose out of the subject agreements. The same is true here; the entirety of Plaintiff's tort action against Defendant rested on the premise that Plaintiff would not have entered into the Agreement had Defendant disclosed certain facts, such as T.O.'s license status and the age of the as-built survey. Plaintiff asserted that Defendant had a duty to disclose these facts in connection with a subcontract agreement.

The *Xuereb* court's interpretation of the phrase "arising out of" did not depend on the additional circumstances surrounding the execution of the purchase agreement, but the court believed the circumstances "buttressed" the interpretation. *Xuereb*, 3 Cal.App.4th at 1344. Multiple courts following *Xuereb* did not engage in any such analysis, instead simply holding that the phrase "arising out of" is broad enough to encompass tort actions involving the subject agreement. *See Maynard*, 216 Cal.App.4th at 993; *Childers*, 48 Cal.App.4th at 1548. As in *Xuereb*, the circumstances here serve to strengthen the Court's interpretation of the attorneys' fees provision in the Agreement.

In *Xuereb*, the court found that both parties "made certain reciprocal agreements" with

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

respect to the real property transaction to which the purchase agreement related. *Id.* The court stated that the tort action arose out of these contingencies. *Id.* As in *Xuereb*, the circumstances surrounding the Agreement also indicate that Plaintiff's fraud claim under 11 U.S.C. § 523(a)(2)(A) "arose out of" the Agreement. Here, both Plaintiff and Defendant made similar reciprocal agreements in the Agreement regarding the contracting work to be done on the subject property. Plaintiff's fraud claim was based on its contention that Defendant was obligated to disclose the license status of T.O and the age of the surveys on which Plaintiff relied. The Agreement explicitly includes a provision regarding licensing of contractors, Agreement, ¶ 21, as well as a provision providing for Plaintiff's review of "contract documents," which, according to Exhibit A to the Agreement, includes the plans. Agreement, ¶ 3.

It is unclear if Defendant is requesting attorneys' fees related to litigation of Plaintiff's claim under 11 U.S.C. § 727. In the Motion, Defendant appears to except fees and costs incurred during the 11 U.S.C. § 727 trial from his request. Motion, p. 6. However, Defendant includes attorneys' fees incurred litigating Plaintiff's claim under 11 U.S.C. § 727 in his attached itemization of attorneys' fees. To the extent Defendant is requesting attorneys' fees incurred defending the denial of discharge claims, Plaintiff's claims under § 727 were based on the omission of assets from Defendant's bankruptcy schedules and statements. These allegations were entirely unrelated to the Agreement, and Plaintiff could have brought the claims under 11 U.S.C. § 727 notwithstanding the Agreement. In other words, the denial of discharge claims did not "arise out of" the Agreement, and Defendant is not entitled to attorneys' fees incurred defending the § 727 claims. However, for the reasons set forth above, Defendant *is* entitled to attorneys' fees incurred defending Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A).

***ii. Prevailing Party***

Plaintiff also argues that Defendant cannot be a prevailing party because Plaintiff prevailed in state court. Pursuant to CCP § 1032(a)(4)—

"Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

"Where a party falls squarely within one of these four definitions, a trial court has little discretion in determining the prevailing party, particularly when there is a party with a 'net monetary recovery.'" *Mac-Go Corp.*, 541 B.R. at 715 (citing *Goodman v. Lozano*, 47 Cal.4th 1327 (2010)). Otherwise, the statute "leaves the determination of the prevailing party to the trial court's discretion." *Heimlich v. Shivji*, 12 Cal.App.5th 152, 160 (Ct. App. 2017).

"[S]ection 1032(a)(4) defines the party with a 'net monetary recovery' as the 'prevailing party.' The word 'recover' means 'to gain by legal process' or 'to obtain a final legal judgment in one's favor.'" *deSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal.4th 1140, 1153 (2016) (citing *Goodman v. Lozano*, 47 Cal.4th 1327, 1334 (2010)).

Plaintiff asserts that Defendant cannot be the prevailing party because Plaintiff was the prevailing party on the breach of contract action in state court. However, Plaintiff has cited no authority providing that where one party prevails in one action and recovers attorneys' fees based on the parties' contract, the other party is barred from recovering attorneys' fees based on the contract in all future actions. Plaintiff did prevail on its breach of contract action in state court, and the state court awarded Plaintiff attorneys' fees as a result. This Court cannot relitigate the breach of contract action or question the state court's award of attorneys' fees to Plaintiff, nor does this Court attempt any such attack on the state court's judgments and findings.

This nondischargeability action is separate and distinct from the state court action. The state court has not made any findings related to fraud or nondischargeability, such that none of the state court's determinations bind this Court in this proceeding. In this action, Defendant is the prevailing party because Defendant "falls squarely" within one of the "prevailing party" definitions under CCP § 1032(a)(4): Defendant is "a defendant as against those plaintiffs who do not recover any relief against that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, September 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

defendant." Where a party fits a definition provided by CCP § 1032(a)(4), the Court "has little discretion" in deeming that party the prevailing party. *Mac-Go Corp.*, 541 B.R. at 715.

Even if Defendant did not neatly fall into one of the categories under CCP § 1032(a)(4), the Court is given discretion to determine the prevailing party and allow costs as the Court sees fit. CCP § 1032(a)(4); *Heimlich*, 12 Cal.App.5th at 160. To the extent Plaintiff views the state court action and this action as one action, where Plaintiff prevailed on the breach of contract claims and Defendant on the fraud and nondischargeability claims, the Court would still award Defendant his attorneys' fees and costs incurred defending the § 523(a)(2)(A) claim. Plaintiff already obtained a significant attorneys' fees award of \$1.65 million after prevailing on its breach of contract claims. Now that Defendant has prevailed on the nondischargeability claim, and in light of the fact that courts are permitted to "apportion costs between the parties," Defendant is entitled to his share of attorneys' fees under the Agreement. Consequently, Defendant being the prevailing party as to Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A), Defendant is entitled to an award of reasonable attorneys' fees and costs.

***C. Reasonableness of Fees***

Movants bear the burden of proving that the fees sought are reasonable. *Center for Biological Diversity v. Cty. of San Bernardino*, 188 Cal.App.4th 603, 615 (Ct. App. 2010); *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). Both California state courts and the Ninth Circuit Court of Appeals customarily assess the reasonableness of attorneys' fees utilizing the "lodestar" approach where the number of hours reasonably expended is multiplied by a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006).

"A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "After computing the lodestar, the court must assess whether additional considerations require adjustment of the figure, such as the novelty or complexity of the issues, the skill and experience of counsel, the quality of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at \*4.

Although Defendant is a prevailing party entitled to attorneys' fees and costs, those fees and costs must be reasonable. In the Forsley Declaration, Defendant's attorney testifies that Defendant incurred attorneys' fees and costs totaling \$53,547.25 "[u]p to the first trial" pertaining to Plaintiff's claims under 11 U.S.C. § 727. Forsley Declaration, ¶ 30. As noted above, Defendant is not entitled to the attorneys' fees and costs incurred defending the denial of discharge claims. As such, the Court will deny this portion of the request.

Mr. Forsley states that Defendant incurred \$95,904.42 in fees and \$1,062.22 in costs to defend from Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). Forsley Declaration, ¶ 34. Mr. Forsley also anticipates incurring \$3,400 to file a reply to the Opposition and to appear at the hearing on the Motion. Forsley Declaration, ¶ 35. Mr. Forsley's rate is \$425 per hour, which is reasonable for an attorney in Los Angeles with Mr. Forsley's experience. *Id.*

The itemized fee statements attached by Mr. Forsley include entries related to defending both the § 727 and § 523 claims. Even if the Court were to deduct the \$53,547.25 incurred up to December 2014 (when the Court entered judgment on the § 727 claim), subsequent entries include Defendant's work defending the appeal of the § 727 judgment. Moreover, Defendant includes a substantial amount of redacted entries, which render impossible a determination of reasonableness. Defendant should supplement the Motion with a declaration attaching an itemized statement of fees and costs that includes *only* fees and costs incurred defending the § 523(a)(2)(A) action. The supplemental attachment also should modify the redactions to allow the Court to assess whether the task performed was necessary and if the time spent on the task was reasonable.

***D. Plaintiff's Request for Sanctions***

In the Opposition, Plaintiff requests sanctions under FRBP 9011 on the basis that Defendant filed the Motion without a proper basis and for an improper purpose, and because Defendant is aware Plaintiff has appealed the Court's Decision. Notwithstanding the fact that Plaintiff's request for sanctions is procedurally improper, *see* FRBP 9011(c)(1)(A) (requiring a motion under FRBP 9011 be made

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

separately from other motions), the facts here do not warrant an award of sanctions. First, Plaintiff has not sought a stay of the Court's Decision pending appeal. Thus, the appeal does not prevent Defendant from moving for an award of attorneys' fees. Moreover, because the Court is granting Defendant's request for attorneys' fees in part, the Motion was not filed without sufficient grounds or for an improper purpose. Consequently, Plaintiff's request for sanctions is denied.

**III. CONCLUSION**

The Court will grant the Motion in part and award Defendant reasonable attorneys' fees and costs incurred litigating Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). No later than **September 26, 2018**, Defendant must file and serve a supplemental declaration attaching **only** the itemized attorneys' fees and costs incurred litigating the 11 U.S.C. § 523(a)(2)(A) claim. Defendant also must include enough information under each entry for the Court to ascertain whether the incurred fees and costs were reasonable. No later than **October 3, 2018**, Plaintiff may file a response to the supplemental declaration **only as to the reasonableness of the attorneys' fees and costs**. Defendant may reply to any response by Plaintiff no later than **October 10, 2017**.

The Court will continue this hearing to **2:30 p.m. on October 17, 2018**.

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

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By

Richard K Diamond (TR)

Robert A Hessling

Robert A Hessling

Michael G D'Alba

Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11495 Steven Nia**

**Chapter 7**

Adv#: 1:18-01048      Nia v. U.S. ROF III Legal Title Trust 2015-1 by U.S. Bank

**#25.00** Defendant FCI Lender Services, Incs Motion to Dismiss Plaintiffs  
Adversary Complaint

Docket 10

**\*\*\* VACATED \*\*\* REASON: Order dismissing adversary entered 7/19/18  
[doc. 24].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Defendant(s):**

U.S. ROF III Legal Title Trust 2015-

Represented By  
Gwen H Ribar

c/o GENPACT REGISTERED

Pro Se

c/o Ryan Zachreson, Recontrust

Pro Se

c/o Michael Griffith FCI Lender

Pro Se

Barrett Daffin Frappier Treder &

Pro Se

FCI Lender Services, Inc.

Represented By  
Edward G Schloss

**Plaintiff(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Nia**

Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11495 Steven Nia**

**Chapter 7**

Adv#: 1:18-01048 Nia v. U.S. ROF III Legal Title Trust 2015-1 by U.S. Bank

**#26.00** Motion to Dismiss Adversary Complaint

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order dismissing adversary entered 7/19/18  
[doc. 24].**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Defendant(s):**

U.S. ROF III Legal Title Trust 2015-

Represented By  
Gwen H Ribar

c/o GENPACT REGISTERED

Pro Se

c/o Ryan Zachreson, Recontrust

Pro Se

c/o Michael Griffith FCI Lender

Pro Se

Barrett Daffin Frappier Treder &

Pro Se

FCI Lender Services, Inc.

Represented By  
Edward G Schloss

**Plaintiff(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Nia**

Amy L Goldman  
Lovee D Sarenas

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087      Liebling and June Liebling individually and on beh v. Goodrich et al

**#27.00**      Creditor's Motion to strike debtor's notice of removal and/or remand  
(per Teresa)

Docket      8

**Tentative Ruling:**

The Court will continue the hearing on this motion to **1:30 p.m. on October 3, 2018**, to be heard with the Court's Order to Show Cause re: Remand [doc. 5].

Appearances are excused on September 12, 2018.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Peter Skarpas aka Peter Scarpas	Pro Se
Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Mark Rudiger	Represented By Edward McCutchan
Elizabeth Ross on behalf of Betty P	Represented By Edward McCutchan
Cathy Ripple	Represented By Edward McCutchan
Dennis Ripple	Represented By Edward McCutchan
Gary Ricioili	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Charlie Ray Moore	Represented By Edward McCutchan
Evelina Peritore	Represented By Edward McCutchan
Scott Page	Represented By Edward McCutchan
Nord Kerry L. Nord, individually	Represented By Edward McCutchan
Carey James	Represented By Edward McCutchan
Mireille M Moore	Represented By Edward McCutchan
John Milliken on behalf of We Care	Represented By Edward McCutchan
Jack Miller and Virginia Miller	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Dorothy Sanders Represented By  
Edward McCutchan

Charlotte Pitois Represented By  
Edward McCutchan

Mary Lou Schmidt individually and Represented By  
Edward McCutchan

Troy Winslow and Robin Winslow Represented By  
Edward McCutchan

Mark D Shulte individually and on Represented By  
Edward McCutchan

Henry T Crigler and Kathleen Represented By  
Edward McCutchan

Francine Deering Represented By  
Edward McCutchan

Gregge Vernon Represented By  
Edward McCutchan

Matthew Zdanek Represented By  
Edward McCutchan

Louise Escher York, individually Represented By  
Edward McCutchan

Amy Marshall Represented By  
Edward McCutchan

Nansi Weil Represented By  
Edward McCutchan

Carmen Violin Represented By  
Edward McCutchan

Charles Sebranek Represented By  
Edward McCutchan

Steve Townsend and Kelly Marie Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Marvin Taylor	Represented By Edward McCutchan
Jerry Strickler and Linda M.	Represented By Edward McCutchan
Ryan Strickler	Represented By Edward McCutchan
Donald Stewart	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Sandy Smith and Edward L. Smith	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Richard Seversen individually and	Represented By Edward McCutchan
Beverly J. Taylor	Represented By Edward McCutchan
Patricia L Marshall	Represented By Edward McCutchan
Steve Harvey	Represented By Edward McCutchan
Fredric I Mann and Katherine Mann	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Henry T Crigler on behalf of the	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

James T Deering  
Represented By  
Edward McCutchan

Dennis Cordellos  
Represented By  
Edward McCutchan

John Cleary and Kathleen J. Cleary  
Represented By  
Edward McCutchan

Eileen Boyle individually and on  
Represented By  
Edward McCutchan

Ken Bowerman and Christine  
Represented By  
Edward McCutchan

Gene Barnes  
Represented By  
Edward McCutchan

Dale Barnes and Caroline Barnes  
Represented By  
Edward McCutchan

Patricia Barnes  
Represented By  
Edward McCutchan

Carl Barnes  
Represented By  
Edward McCutchan

Randy Bailey  
Represented By  
Edward McCutchan

Jackie Ann Albini  
Represented By  
Edward McCutchan

Edward P Albini  
Represented By  
Edward McCutchan

Dolores Abel individually and on  
Represented By  
Edward McCutchan

Richard Abel  
Represented By  
Edward McCutchan

Hyam Liebling and June Liebling  
Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Gary Dezorzi and Judith Dezorzi	Represented By Edward McCutchan
Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Graham H Gettemy individually and	Represented By Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Vernon Larson	Represented By Edward McCutchan
Ronald P Lapham and Rosemary E.	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Peter Kerston	Represented By Edward McCutchan
Glen Lane	Represented By Edward McCutchan
Pamela Lane	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Thomas B Marshall	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Bill Ong Hing and Lenora Verne

Represented By  
Edward McCutchan

John Hightower and Polly Ann

Represented By  
Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#1.00** Confirmation hearing re second amended  
chapter 11 plan of reorganization

Docket 138

**Tentative Ruling:**

Confirm Individual Debtor's Second Amended Chapter 11 Plan of Reorganization [doc. 138]. No later than **February 7, 2019**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **February 21, 2019 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the debtor is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the debtor will be so notified.

**Party Information**

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12030 Herbert Simmons**

**Chapter 11**

**#2.00** Status conference re chapter 11 case

fr. 9/7/17; 10/5/17; 2/8/18; 3/15/18; 5/10/18; 6/21/18; 7/19/18

Docket 1

**Tentative Ruling:**

In light of the tentative ruling regarding chapter 11 plan confirmation [calendar no. 1],  
appearances on September 13, 2018 are excused.

**Party Information**

**Debtor(s):**

Herbert Simmons

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#3.00** Disclosure statement hearing in support of plan of reorganization  
fr. 6/14/18

Docket 45

**Tentative Ruling:**

In the untimely opposition filed by Pogos Araik Melkonian [doc. 83], Mr. Melkonian disputes the valuation of the debtors' residence. However, Mr. Melkonian has not provided admissible evidence contradicting the debtors' valuation. In addition, Mr. Melkonian's assertion that the debtors' projected monthly income is inconsistent with the debtors' monthly operating reports is inaccurate; the debtors' most recent monthly operating reports reflect monthly income and expenses that are comparable to the estimated projected income and expenses included in the amended disclosure statement [doc. 78].

However, the debtors have not yet filed the alleged stipulation with JPMorgan Chase Bank, N.A. ("Chase"). The Court cannot assess whether the disclosure statement contains adequate information until the debtors file the stipulation with Chase on the docket. The Court will continue this hearing to **1:00 p.m. on October 18, 2018**. No later than **October 4, 2018**, the debtors must file the stipulation with Chase on the docket and lodge a proposed order approving the stipulation. If the Court approves the stipulation with Chase, no later than **October 11, 2018**, the debtors must file an amended disclosure statement and attach the stipulation and order to the amended disclosure statement.

Prior to the continued hearing, the Court will assess whether, in light of the stipulated treatment of Chase's claim, the debtors have provided an accurate liquidation analysis and intend to contribute their disposable income to their chapter 11 plan. Although Mr. Melkonian's opposition was untimely, the Court will not strike the opposition. At this time, the Court has addressed and disposed of two of Mr. Melkonian's arguments herein. The Court will consider the remainder of Mr. Melkonian's concerns after reviewing the stipulation with Chase.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 13, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#4.00 Status conference re: chapter 11 case**

fr. 10/19/17; 3/15/18; 6/14/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on October 18, 2018**, to be held in conjunction with the hearing on the adequacy of the debtors' proposed disclosure statement.

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

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 13, 2018

Hearing Room 301

2:00 PM

1:18-10694 Charles Hung Ngo

Chapter 7

#5.00 Motion for turnover of property of the estate

fr. 7/19/18

**Stip to continue filed 9/10/18**

Docket 18

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 9/11/18  
continuing hearing to 11/15/18 at 2:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Charles Hung Ngo

Represented By  
Thomas K Emmitt

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Carmela Pagay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 13, 2018

Hearing Room 301

2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

- #6.00 Chapter 7 Trustee's Motion:  
(1) Pursuant to bankruptcy rule 9019(a) for an order approving settlement between David Gottlieb, chapter 7 trustee and debtor Tisha Michelle Martin  
(2) Pursuant to 11 U.S.C. §363(b) and §363(m) approving the sale of personal property

Docket 181

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

8:30 AM

**1:18-11513 Daysi Barbosa**

**Chapter 7**

**#1.00 Reaffirmation Agreement Between Debtor and  
American Honda Finance Corporation**

Docket 7

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Daysi Barbosa

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10877 Shirin Ataie-Tabrizi**

**Chapter 13**

**#2.00 Chapter 13 confirmation hearing**

Docket 10

**Tentative Ruling:**

Tentative ruling regarding the debtor's evidentiary objections to the identified paragraphs in the Declaration of Habib Bonakdarzadeh set forth below:

paras. 2 and 4: overruled  
Exhibit 1: overruled  
Exhibit 2: sustained

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

**Debtor(s):**

Shirin Ataie-Tabrizi

Represented By  
Glenn Ward Calsada

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#45.00** Motion For Order Determining Value Of Collateral  
[11 U.S.C. § 506(a), FRBP 3012]

Docket 46

**\*\*\* VACATED \*\*\* REASON: Order approving stip to continue entered  
9/17/18. Hearing continued to 10/9/18 at 10:30 AM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Movant(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case due to expiration of the plan

fr. 3/13/18; 5/8/18; 8/7/18

Docket 97

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:12-19663 Melissa Mallare Pontanilla and Joey Patrick Pontanilla**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case due to  
expiration of the plan

fr. 4/10/18; 6/12/18; 8/7/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Melissa Mallare Pontanilla

Represented By  
Ali R Nader

**Joint Debtor(s):**

Joey Patrick Pontanilla

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:12-20778 Randy Gene Noble**

**Chapter 13**

**#48.00** Trustee's Motion to dismiss case

Docket 117

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Randy Gene Noble

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:13-11861 Max Shinn Hernandez, IV**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 8/7/18

Docket 64

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Max Shinn Hernandez IV

Represented By  
Carlo Reyes

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16461 Alfredo J Gutierrez and Dora Gutierrez**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 97

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfredo J Gutierrez

Represented By  
Elena Steers

**Joint Debtor(s):**

Dora Gutierrez

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-10334 Kurt Stromer**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 72

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Kurt Stromer

Represented By  
David S Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-10894 Traci L. Scher and Craig Scher**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 59

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Traci L. Scher

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Craig Scher

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11542 Andrea Nicole Williams-Hart**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 7/10/18

Docket 135

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Andrea Nicole Williams-Hart

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11699 Larry John Phillips and Clara Josephine Phillips**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 111

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Larry John Phillips

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Clara Josephine Phillips

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11937 Cindy Anne Summers**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 78

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Cindy Anne Summers

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-12897 Mati Timor**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 146

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mati Timor

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14155 Yuanis Newton Heathington and Celestine Lejune**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/7/17; 1/9/18; 3/13/18; 5/8/18; 7/10/18

Docket 68

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yuanis Newton Heathington

Represented By  
Michael Jay Berger

**Joint Debtor(s):**

Celestine Lejune Heathington

Represented By  
Michael Jay Berger

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 11/7/17; 1/9/18; 2/13/18; 4/10/18; 5/8/18; 8/7/18

Docket 52

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Adan Ramon Rosales

Represented By  
Donald E Iwuchuku

**Joint Debtor(s):**

Blanca Estela Rosales

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11612 Vince Okumura**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vince Okumura

Represented By  
Allan S Williams

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11981 Polonia Katarina Bright Johnson and Alton Earl Johnson**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 94

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Polonia Katarina Bright Johnson

Represented By  
Sanaz S Bereliani

**Joint Debtor(s):**

Alton Earl Johnson

Represented By  
Sanaz S Bereliani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13338 Marcial Paredes Malpica**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 115

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Marcial Paredes Malpica

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/ 8/18; 7/10/18; 8/7/18

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13957 Maria G. Luchero**

**Chapter 13**

**#63.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 8/7/2018

Docket 80

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maria G. Luchero

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#64.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18; 6/12/18, 8/7/18;

Docket 48

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Brian Igbini

Represented By

Anthony Obehi Egbase

Crystle J Lindsey

Edith Walters

W. Sloan Youkstetter

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#65.00** Trustee's motion to dismiss case for failure to make plan

Docket 81

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10666 Paula Trickey**

**Chapter 13**

**#66.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 62

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Paula Trickey

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11712 Alfonso Ruiz Cruz**

**Chapter 13**

**#67.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfonso Ruiz Cruz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12565 Hamid Reza Janbakhsh-Mazlaghani**

**Chapter 13**

**#68.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 38

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hamid Reza Janbakhsh-Mazlaghani

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12762 Michael Lewis Smith**

**Chapter 13**

**#69.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 7/10/18

Docket 44

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Michael Lewis Smith

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#70.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18; 7/10/18; 8/7/2018

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#71.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 62

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10083 Javier Magana and Jacqueline E. Magana**

**Chapter 13**

**#72.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 7/10/18

Docket 56

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Javier Magana

Represented By  
Andrew Moher

**Joint Debtor(s):**

Jacqueline E. Magana

Represented By  
Andrew Moher

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10796 Eloy Medina, Jr.**

**Chapter 13**

**#73.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 42

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Eloy Medina Jr.

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11135 Jose Orcia Ramirez**

**Chapter 13**

**#74.00** Trustee's motion to dismiss case for failure to make  
plan payments  
(Evidentiary Hearing)

fr. 8/7/2018

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Orcia Ramirez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11443 Martin Cohn**

**Chapter 13**

**#75.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 5/8/18; 7/10/18

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Martin Cohn

Represented By  
Nathan A Berneman

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12988 Parminder Singh**

**Chapter 13**

**#76.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 63

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Parminder Singh

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:17-13303 Leonarda G Aguilar**

**Chapter 13**

**#77.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 41

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Leonarda G Aguilar

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, September 18, 2018

Hearing Room 301

11:00 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

#78.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 38

\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 9/7/18.

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Pedro Mejia Lopez

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#79.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 49

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10264 Joe Lopez, Jr.**

**Chapter 13**

**#80.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 29

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Joe Lopez Jr.

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10369 Jaime Gutierrez**

**Chapter 13**

**#81.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 34

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#82.00 Debtor's motion for hardship discharge**

Docket 105

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

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

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:12-18852 Alvaro Aceves and Rosa Aceves**

**Chapter 13**

**#83.00** Debtor's motion to excuse the debtor from completing an application for entry of discharge (11 U.S.C. Sec. 109(H)(4) and 727(a)(11))

Docket 108

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Alvaro Aceves

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Rosa Aceves

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, September 18, 2018

Hearing Room 301

11:30 AM

1:13-10735 Dawn Elana Gonzales

Chapter 13

#84.00 Motion objecting to the response of JP Morgan Chase to the Chapter 13 Trustee's notice of final cure payment

**Stip to continue filed 9/14/18.**

Docket 122

\*\*\* VACATED \*\*\* REASON: Order approving stip to continue entered 9/17/18. Hearing continued to 10/9/18 at 11:30 AM.

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Dawn Elana Gonzales

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:13-11861 Max Shinn Hernandez, IV**

**Chapter 13**

**#85.00** Order to Show Cause Who Debtor's counsel Should Not Be Sanctioned For Failure To Appear At Hearing On Trustee's Motion To Dismiss

Docket 67

**Tentative Ruling:**

On April 24, 2018, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Max Shinn Hernandez, IV's (the "Debtor") case for failure to make plan payments ("Motion to Dismiss") [doc. 64].

On August 7, 2018, the Court held a hearing on the Motion to Dismiss. The Debtor's counsel did not appear. On August 16, 2018 the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss* (the "OSC") [doc. 67], on the grounds that the Debtor's counsel failed to appear at the hearing on the Trustee's motion to dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). The Debtor's counsel was ordered to explain his failure to appear and file and serve on the Debtor a written response to the OSC no later than September 4, 2018.

On September 4, 2018, the Debtor's counsel filed his response ("Response") [doc. 69], but did not serve his Response on the Debtor as required by the OSC. In his Response, the Debtor's counsel stated that he failed to appear at the hearing because he did not calendar the Motion to Dismiss hearing (Response, ¶ 2.) The Debtor's counsel represents that he mistakenly thought that the Debtor would cure the default before the hearing, but the Debtor did not (*Id.* at ¶ 4).

If the Debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on September 18, 2018 at 11:00 a.m., then the Court may discharge the OSC. However, if the chapter 13 trustee does not withdraw the Motion to Dismiss, and no appearance for the Debtor is made at the continued Motion to Dismiss hearing, the Court will impose sanctions on the Debtor's counsel.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Max Shinn Hernandez, IV**

**Chapter 13**

**Debtor(s):**

Max Shinn Hernandez IV

Represented By  
Carlo Reyes

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:13-17940 Jordan Mark Wyatt**

**Chapter 13**

**#86.00 Debtor's motion for hardship discharge**

fr. 8/7/18

Docket 57

**Tentative Ruling:**

**8/7/2018 Tentative:**

On June 28, 2018, the chapter 13 trustee (the "Trustee") filed comments [doc. 59] requesting additional information from the debtor, such as information about the debtor's spouse's income, copies of the debtor's tax returns since 2014 and current proof of income. The debtor has not filed a response to the Trustee's comments.

In addition, the debtor has not specified if he is paying alimony and car installment payments for the benefit of his spouse in accordance with a court order. Did a court order the debtor to pay these amounts to his spouse? The debtor must provide this information before the Court rules on the debtor's request for a hardship discharge.

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

**Debtor(s):**

Jordan Mark Wyatt

Represented By  
Sundee M Teeple  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12647 Freddy Benjamin Castro**

**Chapter 13**

**#87.00** Motion to vacate order or, in the alternative, for reconsideration of, orders avoiding lien of Deutsche Bank National Trust Company and confirming debtor's chapter 13 plan

fr. 6/12/18

Docket 52

**Tentative Ruling:**

At the last hearing, on June 12, 2018, the Court instructed the parties to mediate this matter by September 1, 2018. The parties have not filed any updates with the Court. What is the status of the parties' mediation?

**6/12/2018 Tentative:**

Deny.

**I. BACKGROUND**

On October 27, 2005, Freddy Benjamin Castro ("Debtor") and Imelda E. Castro executed a promissory note (the "Note"), made payable to Right Away Mortgage, Inc. ("Right Away"), in the principal amount of \$103,800. Declaration of Gina D'Elia (the "D'Elia Declaration") [doc. 54], ¶ 5, Exhibit 1. The Note was secured by a second position deed of trust (the "DOT") recorded against the real property located at 14206 Pierce Street, Pacoima, California 91331 (the "Pacoima Property"). *Id.*, ¶ 5, Exhibit 2. The DOT indicated that Debtor and Ms. Castro held the Pacoima Property as joint tenants. *Id.* Subsequently, Right Away assigned the Note and DOT to Deutsche Bank National Trust Company ("Deutsche Bank").

On September 12, 2017, Debtor filed a chapter 13 petition. In his schedule A/B, Debtor listed the Pacoima Property and valued the Pacoima Property at \$370,000. In his schedule D, Debtor listed a first priority deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$416,000. Debtor also listed the second priority DOT in favor of Deutsche Bank in the amount of \$103,800.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Concurrently with his schedules, Debtor filed a proposed chapter 13 plan (the "Plan") [doc. 2]. In the Plan, Debtor indicated that he intended to avoid Deutsche Bank's lien. Plan, Section V.F. On October 26, 2016, Deutsche Bank filed an objection the Plan [doc. 13], asserting that Debtor could not avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 1322(b)(2). Deutsche Bank also objected to Debtor's valuation of the Pacoima Property.

On November 2, 2016, Deutsche Bank filed claim no. 2-1, asserting a secured claim in the amount of \$151,042.92. On December 12, 2016, Debtor filed a motion to avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 506(d) (the "Motion to Avoid Lien") [doc. 19], valuing the Pacoima Property at \$360,000. Deutsche Bank opposed the Motion to Avoid Lien [doc. 22], again asserting that applicable law prohibited avoidance of Deutsche Bank's lien and disputing Debtor's valuation of the Pacoima Property. This time, Deutsche Bank also asserted that Debtor could not release his non-debtor spouse from liability.

On January 10, 2017, the Court held an initial hearing on the Motion to Avoid Lien. At that time, the Court continued the hearing on the Motion to Avoid Lien and set deadlines for Deutsche Bank to file a competing appraisal. At the initial hearing, Martin Weingarten appeared on behalf of Deutsche Bank. According to counsel for Deutsche Bank, Mr. Weingarten did not inform Deutsche Bank about the impending deadlines. Declaration of Nichole Glowin ("Glowin Declaration") [doc. 55], ¶ 11. Nevertheless, the appearance report reflected that the hearing was "[c]ontinued per tentative." *Id.*, ¶ 11, Exhibit 10.

On March 13, 2017, Deutsche Bank and Debtor entered into a stipulation to further continue the hearing on the Motion to Avoid Lien (the "Stipulation to Continue") [doc. 26]. On March 14, 2017, the Court entered an order approving the Stipulation to Continue [doc. 29].

On April 4, 2018, the Court held a continued hearing on the Motion to Avoid Lien. Mr. Weingarten again appeared on behalf of Deutsche Bank. Prior to the continued hearing, Deutsche Bank did not timely file an appraisal, and did not otherwise request a continuance of the hearing. As a result, in light of Deutsche Bank's failure to file an appraisal timely, the Court adopted the Debtor's valuation.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

On June 21, 2017, the Court entered an order granting the Motion to Avoid Lien (the "Order Avoiding Lien") [doc. 40]. On June 13, 2017, the Court held a confirmation hearing. Deutsche Bank appeared at the confirmation hearing. On June 29, 2017, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 42].

On March 28, 2018, Deutsche Bank filed a motion requesting relief from the Order to Avoid Lien and the Confirmation Order (the "Motion") [doc. 52], on the basis that Mr. Weingarten did not inform Deutsche Bank about the deadline to file an appraisal and on the alternative basis that the Court made a mistake of law by avoiding a lien on a property in which Ms. Castro, a non-filing co-obligor on the Note and the DOT, also holds an interest. On May 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 59]. On June 7, 2018, Deutsche Bank filed an untimely reply to the Opposition (the "Reply") [doc. 60].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)—

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- ...
- (6) any other reason that justifies relief.

### ***A. Rule 60(b)(1)***

#### ***i. Excusable Neglect***

Rule 60(b)(1) is not intended to remedy "mistakes [that] arose from attorney misconduct." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006). "Neither ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1)." *Engelson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992); *see also Casey v. Albertson's, Inc.*, 362

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

F.3d 1254, 1260 (9th Cir. 2004) ("As a general rule, parties are bound by the actions of their lawyers, and alleged attorney malpractice does not usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1).").

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [opposing party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed.2d 74 (1993).

Although *Pioneer* dealt with excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit Court of Appeals in *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382-83 (9th Cir. 1997), held that the *Pioneer* test also applies to determination of excusable neglect under Rule 60(b) ("We now hold that the equitable test set out in *Pioneer* applies to Rule 60(b) as well."). Significantly, although the trial court is granted discretion, the Court of Appeals has made clear that it is an abuse of that discretion to deny a Rule 60(b)(1) motion without considering (at a minimum) all four of the *Pioneer* factors. See *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (overturning denial of Rule 60(b)(1) motion because the trial court did not consider one of the four factors); *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing trial court's denial of Rule 60(b)(1) motion for failure to mention and consider the test in *Pioneer* and *Briones*). In *Lemoge*, the Court of Appeals further noted that although "prejudice to the movant is not an explicit *Pioneer-Briones* factor," it may be a relevant factor as one of the "'relevant circumstances' that should be considered when evaluating excusable neglect." *Lemoge*, 578 F.3d 1195.

Here, Deutsche Bank asserts that its conduct should be excused because Mr. Weingarten, Deutsche Bank's appearance attorney, neglected to inform Deutsche Bank about the filing deadlines set by the Court. For the reasons set forth below, Deutsche Bank has not demonstrated excusable neglect warranting vacating of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Order to Avoid Lien or the Confirmation Order.

*a. Prejudice to Other Parties*

Debtor will suffer prejudice if the Court vacates the Order to Avoid Lien and/or the Confirmation Order. If the Court vacates either order, Debtor will have to address how Debtor intends to treat Deutsche Bank's secured claim and will likely have to propose a modified chapter 13 plan almost a year after the Court confirmed the Plan. Vacating the Order to Avoid Lien and/or the Confirmation Order also will result in prejudice to other creditors of the estate, who may receive distributions in amounts different than the disbursements contemplated by the Plan. In addition, almost two years after the petition date, Debtor will have to spend time and resources again litigating valuation of the Pacoima Property. As such, this factor weighs against vacating either order on account of excusable neglect.

*b. Length of Delay and its Potential Impact on Judicial Proceedings*

Rule 60(c)(1) requires that "a motion under Rule 60(b) must be made within a reasonable time . . . and no more than a year after the entry of judgment or order." "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Lemoge*, 587 F.3d at 1196.

Debtor asserts that the Motion is untimely because Deutsche Bank filed the Motion over one year after the Court issued a ruling on the Motion to Avoid Lien. However, Rule 60(b) governs relief from final judgments, *orders* or proceedings. Here, the Court entered the Order to Avoid Lien on June 21, 2017, and the Confirmation Order on June 29, 2017. Deutsche Bank filed the Motion on March 28, 2017, less than a year after the Court's entry of the orders at issue.

Although Deutsche Bank filed the Motion within the one year deadline provided by Rule 60(b), the Court must still assess whether Deutsche Bank filed the Motion within a "reasonable" time frame. Here, Deutsche Bank appeared at the confirmation hearing on June 13, 2017, at which time Deutsche Bank opposed confirmation of the Plan and raised Deutsche Bank's objection to the avoidance of its lien. The Court informed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Deutsche Bank that it would confirm the Plan and avoid Deutsche Bank's lien. Rather than file a motion as soon as practical, Deutsche Bank waited eight months. Significantly, all of the information on which Deutsche Bank relies in the Motion was available to Deutsche Bank at the time the Court adjudicated both the Motion to Avoid Lien and confirmation of the Plan.

According to Deutsche Bank, it delayed filing the Motion because Deutsche Bank and Debtor continued to engage in settlement discussions. First, Deutsche Bank could have filed a motion for reconsideration while continuing to discuss settlement with Debtor. The option to attempt settlement with Debtor was not mutually exclusive from seeking relief from the Order to Avoid Lien or the Confirmation Order. Second, according to Deutsche Bank itself, Deutsche Bank had trouble communicating with Debtor's counsel for several months before Deutsche Bank decided to file the Motion. Despite several months of failing to reach an agreement with Debtor, Deutsche Bank continued to delay filing the Motion. Consequently, Deutsche Bank did not file the Motion within a reasonable time.

*c. Reason for the Delay/Delay in Reasonable Control of the Movant*

Again, Deutsche Bank attributes the delay in filing the Motion to Deutsche Bank's attempt to settle with Debtor after entry of the Order to Avoid Lien and the Confirmation Order. However, Deutsche Bank could have filed the Motion while continuing to discuss settlement with Debtor. In addition, Deutsche Bank did not learn of any new evidence or law that caused Deutsche Bank to delay filing the Motion for almost one year. Because Deutsche Bank had reasonable control of the delay at all times, this factor also weighs against granting the Motion.

*d. Whether Movant Acted in Good Faith*

There is no evidence on the record demonstrating that Deutsche Bank did not act in good faith. Nevertheless, Deutsche Bank attempts to exonerate itself from responsibility with respect to missing the deadline to file its competing appraisal. Although the appearance report did not include the deadlines provided by the Court in the Court's ruling, the appearance report explicitly referred to the tentative ruling. Glowin Declaration, ¶ 11, Exhibit 10. The Court's tentative rulings are available to the public on the Court's website. Thus, Deutsche Bank could have easily accessed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**  
the deadlines set by the Court.

**Chapter 13**

Even if a lack of communication between Mr. Weingarten and Deutsche Bank led to Deutsche Bank's failure to file an appraisal by the required deadline, Deutsche Bank has not provided a reasonable excuse for its delay of almost one year in bringing this Motion. As noted above, vacating the Order to Avoid Lien and/or the Confirmation Order would be extremely prejudicial to Debtor and other creditors of the estate. At the time the Court entered both orders, Deutsche Bank had all of the information and law on which it relies. Debtor and the other creditors should not bear the brunt of Deutsche Bank's mistake and highly belated response to the Order to Avoid Lien and/or the Confirmation Order. Under these facts, excusable neglect does not warrant vacating the orders at issue.

*ii. Mistake of Law*

The alternative basis for relief under Rule 60(b)(1) set forth by Deutsche Bank is that avoidance of Deutsche Bank's lien and confirmation of the Plan was a mistake of law. Specifically, Deutsche Bank asserts that the Court did not have the ability to release the liability of Ms. Castro, as a non-debtor, or Ms. Castro's property through either the Order to Avoid Lien or the Confirmation Order.

A chapter 13 plan may "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[.] 11 U.S.C. § 1322(b)(2). Although § 1322(b)(2) prohibits stripping of liens secured only by a debtor's principal residence, Ninth Circuit authority allows a chapter 13 debtor to strip from a primary residence any junior liens that are wholly unsecured. *In re Zimmer*, 313 F.3d 1220, 1225 (9th Cir. 2002) ("Without a secured claim, a creditor's rights may be modified.").

Here, because Deutsche Bank has not shown excusable neglect for the reasons set forth above, the Court will not consider Deutsche Bank's competing appraisal. Using the Court's original valuation of \$360,000, Deutsche Bank's lien would normally be subject to avoidance under *Zimmer*. The issue is whether the Court had the authority to strip Deutsche Bank's junior lien at all, despite Deutsche Bank's status as a wholly unsecured lienholder, if Debtor and Ms. Castro, a non-filing co-obligor, held the Pacoima Property as joint tenants.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Pursuant to 11 U.S.C. § 524(e), "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." In other words, the Court must decide if the Pacoima Property, or any part of it, constitutes "property of any other entity," such that this Court would not have authority to afford relief as to that portion of the Pacoima Property.

Here, the DOT notes that Debtor and Ms. Castro hold the property as joint tenants. D'Elia Declaration, ¶ 5, Exhibit 2. In a joint tenancy, joint tenants divide a property in equal shares, with a joint tenant's share considered his or her own separate property. Cal. Civ. Code § 683(a); *see also In re Obedian*, 546 B.R. 409, 412 (Bankr. C.D. Cal. 2016). Moreover, California Evidence Code § 662 creates a record title presumption whereby the nature of ownership set forth in title to the property controls and may be rebutted only by clear and convincing evidence. The analysis is different, however, if the joint tenants are married.

On the other hand, California Family Code § 760, provides that, "except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." In 2014, the California Supreme Court issued a decision in *In re Valli*, 58 Cal.4th 1396 (2014), wherein the court addressed which statutory presumption prevailed in the context of a marital dissolution. In *Valli*, the husband had designated his wife as the "sole owner and beneficiary" on a life insurance policy, which was purchased with community property funds. *Valli*, 58 Cal.4th at 1400. Upon dissolution, the husband argued that the policy was community property despite the title of the policy being in the wife's name. *Id.* The California Supreme Court agreed, holding that the community property presumption trumps the record title presumption found in California Evidence Code § 662 in a dissolution proceeding. *Id.*, at 1406.

After *Valli*, there was some ambiguity regarding whether the community property presumption serves to override the record title presumption in a context other than a marital dissolution. At least two bankruptcy courts found that the holding in *Valli* also applied in the bankruptcy context. *Obedian*, 546 B.R. 409; *In re Collins*, 2016 WL 4570413 (Bankr. S.D. Cal. Aug. 29, 2016). Recently, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") issued a decision laying the matter to rest. *In re*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

*Brace*, 566 B.R. 13 (B.A.P. 9th Cir. 2017).

In *Brace*, the debtor and his non-debtor spouse acquired a residence and additional real properties in California as "husband and wife as joint tenants." *Id.*, at 16. The debtor and his spouse then placed the properties in an irrevocable trust, with the debtor's spouse designated as the beneficiary of the trust and the debtor acting as the sole trustee of the trust. *Id.* Subsequently, the debtor filed a chapter 7 petition. *Id.* The chapter 7 trustee then filed a fraudulent transfer action, requesting a declaration that the properties were property of the estate and seeking to avoid the transfer of the properties to the trust. *Id.* The bankruptcy court ruled in favor of the chapter 7 trustee, holding that the properties were property of the estate. *Id.*

The debtor and his non-filing spouse then asked the bankruptcy court to amend the judgment to provide that the properties were owned one half by the debtor and one half by his non-filing spouse, and that only the debtor's interests in the properties were property of the estate. *Id.*, at 17. The bankruptcy court disagreed, holding that despite the record title showing that the debtor and his non-filing spouse took the properties as joint tenants, the properties were acquired with community assets and presumptively constituted community property. *Id.* After a lengthy and thorough analysis, the BAP affirmed the bankruptcy court's holding. *Id.*, at 18-28.

The BAP first assessed the holdings of *Valli* and prior Ninth Circuit case law regarding the record title presumption. *Id.*, at 18-21. In so doing, the BAP found, like *Obedian* and *Collins*, that the California Supreme Court's holding in *Valli* superseded the Ninth Circuit Court of Appeals' prior decision in *In re Summers*, 332 F.3d 1240 (9th Cir. 2003), where the Court of Appeals had held that the community property presumption is rebutted when a married couple acquires property as joint tenants. *Id.*, at 20-23.

Importantly, the BAP held that the community property presumption applies despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding and did not attempt to transmute the properties like the parties in *Valli*. *Id.*, at 23-25. Given the facts and extensive policy in *Brace*, the BAP held that "[a]lthough there may be instances where the record title presumption could apply to marital property..., as a general rule, California's community property presumption applies in disputes in bankruptcy involving the characterization of marital property."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, September 18, 2018

Hearing Room 301

11:30 AM

CONT... **Freddy Benjamin Castro**

**Chapter 13**

*Id.*, at 19. The BAP reached this holding: (A) despite the fact that the debtor and his non-filing spouse acquired the properties as joint tenants; (B) despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding; and (C) despite the fact that transmutation was not at issue in *Brace*, unlike in *Valli*.

In light of *Brace*, the community property presumption applies despite the fact that the title to the Pacoima Property may reflect that the parties hold the Pacoima Property as joint tenants. The record does not reflect any evidence that would serve to rebut the community property presumption. Under *Brace*, the mere mention of Debtor and Ms. Castro as joint tenants in the deed of trust is insufficient to rebut the presumption. In other words, the Court would need additional, strong evidence confirming that Debtor and Ms. Castro intended to take the Pacoima Property as joint tenants. Absent such evidence, the Pacoima Property is properly characterized as community property.

Pursuant to 11 U.S.C. § 541(a)(2), the commencement of a bankruptcy case creates an estate comprised, in part, of "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is... under the sole, equal, or joint management and control of the debtor; or... liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable." 11 U.S.C. § 541(a)(2)(A), (B).

Because the presumption is that the Pacoima Property is community property, upon commencement of Debtor's case, the Pacoima Property became property of the estate *in full*. As a result, the provision of 11 U.S.C. § 524(e) setting forth that the property of another entity is not relieved of liability is not applicable here.

In fact, the BAP has explicitly found that community property is subject to lien stripping under 11 U.S.C. § 506 even if only one spouse has filed for bankruptcy protection. *In re Maynard*, 264 B.R. 209 (B.A.P. 9th Cir. 2001). In *Maynard*, the debtor filed a chapter 13 petition and subsequently filed a motion to avoid a lien pursuant to 11 U.S.C § 506(d). *Id.*, at 211. The bankruptcy ruled in favor of the debtor and avoided the lienholder's lien. *Id.*, at 213.

On appeal, the lienholder argued that the bankruptcy court erred in avoiding its lien because the debtor's non-debtor spouse also held an interest in the subject property.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

*Id.*, at 214. The BAP disagreed. *Id.* The BAP found that, in accordance with 11 U.S.C. § 541(a)(2), the community property became property of the estate and, as a result, "the entire lien was subject to valuation and avoidance under § 506." *Id.*

Pursuant to *Brace* and *Maynard*, the Court had the authority to avoid Deutsche Bank's lien in full. Because Deutsche Bank has not demonstrated excusable neglect, *supra*, Debtor's appraisal stands as the only evidence of value of the Pacoima Property. That appraisal reflected the value of the Pacoima Property as \$360,000. Using that valuation, Deutsche Bank's lien was entirely unsecured, and the Court appropriately avoided Deutsche Bank's lien in accordance with the authorities above.

Consequently, Deutsche Bank has not shown that the Court made a mistake of law warranting reconsideration of either the Order to Avoid Lien or the Confirmation Order.

***B. Rule 60(b)(6)***

As with Rule 60(b)(1), a request under Rule 60(b)(6) "must be made within a reasonable time." Rule 60(c)(1). For the same reasons set forth above, Deutsche Bank did not file its request for relief within a reasonable time.

Rule 60(b)(6) is the "catch-all provision" of Rule 60(b) "that is read as being exclusive of the other grounds for relief listed in Rule 60." *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 n.8 (9th Cir. 2002). "In order to obtain such relief from a judgment, however, extraordinary circumstances must exist." *In re Estrada*, 568 B.R. 533, 541 (Bankr C.D. Cal. 2017) (citing *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982)). "The burden is on the moving party to bring himself within the purviews of Rule 60(b)(6)." *In re Hammer*, 112 B.R. 341, 345 (B.A.P. 9th Cir. 1990).

First, Deutsche Bank does not provide a different basis for relief under the catch-all provision of Rule 60(b)(6). Deutsche Bank mostly relies on the same grounds as its request for relief under Rule 60(b)(1). Moreover, Deutsche Bank has not shown the type of "extraordinary circumstances" that merit relief under Rule 60(b)(6). As set forth above, the Court did not make a mistake of law that deprived Deutsche Bank of its rights. Rather, Deutsche Bank did not timely file an appraisal, and then waited nearly a year to file the Motion. Any injustice suffered by Deutsche Bank is a result of Deutsche Bank's own delay. There being no other facts showing the type of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

manifest injustice required for purposes of Rule 60(b)(6), the Court also will not vacate the Order to Avoid Lien or Confirmation Order under this subsection.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

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

**Debtor(s):**

Freddy Benjamin Castro

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10769 Samuel Gale Bartels**

**Chapter 13**

**#88.00** Debtor's motion objection to claim number 4 by Claimant Celtic Bank, its successors and/or assigns; request claim be deemed secured in the amount of \$1,433.00 and non-priority unsecured in the amount \$137,569.81

Docket 35

**Tentative Ruling:**

Objection sustained; secured claim of Celtic Bank (no. 4-1 on the Court's claims register), to be allowed as a secured claim only to the extent of \$1,433.00.

Debtor must submit order within seven (7) days.

Note: This matter appears to be uncontested. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Samuel Gale Bartels

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:18-10831 Jose Reynaldo Juarez**

**Chapter 13**

**#89.00** Trustee's amended objection to debtor's claim of exemption

Docket 28

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtor filed an amended Schedule C to claim an exemption under the California Code of Civil Procedure § 704.730(a) (3) [doc. 32]. Absent specific objections to the debtor's claimed exemption in the amended Schedule C, the Court will overrule the chapter 13 trustee's objection without prejudice.

The chapter 13 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Jose Reynaldo Juarez

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, September 18, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11299 James Lamont Dubose**

**Chapter 13**

**#90.00 Debtor's motion to convert case from chapter 13 to 11**

Docket 30

**Tentative Ruling:**

On May 20, 2018, James Lamont Dubose ("Debtor") filed a voluntary chapter 13 petition. On July 24, 2018, Debtor filed the pending *Motion to Convert Chapter 13 Case to Chapter 11* (the "Motion") [doc. 30].

On September 16, 2018, Debtor filed *Debtor's Request to Convert Chapter 13 Case to One Under Chapter 7 Pursuant to 11 U.S.C. § 1307(a)* [doc. 47]. On September 17, 2018, Debtor's case was converted to chapter 7 [doc. 58].

In light of the recent conversion to chapter 7, what is Debtor's intention regarding the Motion? If counsel for Debtor does not appear at the hearing on the Motion, the Court will deny the Motion for failure to prosecute, and the Court will prepare the order.

**Party Information**

**Debtor(s):**

James Lamont Dubose

Represented By  
Stephen L Burton

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

9:00 AM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#0.10 Debtor's Emergency motion for orders authorizing interim and final use of cash collateral**

fr. 9/11/18

Docket 18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

**#1.00** First interim application of BPE&H, an Accountancy Corporation for approval of fees

Docket 289

**Tentative Ruling:**

BPE&H, accountant to chapter 7 trustee – approve fees of \$5,068.00, pursuant to 11 U.S.C. § 330, on an interim basis.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by BPE&H is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and BPE&H will be so notified.

**Party Information**

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

**#2.00** Second and final application of Greenberg & Bass, LLP for payment of fees and reimbursement of expenses as attorneys for debtor and debtor in possession

Docket 291

**Tentative Ruling:**

Greenberg & Bass, LLP ("Greenberg"), counsel to debtor – approve fees of \$80,375.01 and reimbursement of expenses of \$157.26, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis.

Greenberg must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the Greenberg is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Greenberg will be so notified.

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

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Whitney Green Lynn**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

**#3.00** David Keith Gottlieb, Chapter 7 Trustee's first interim application for compensation and reimbursement of expenses

Docket 293

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$73,241.72 and reimbursement of expenses of \$114.20 on an interim basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the chapter 7 trustee will be so notified.

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

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:13-11900 Whitney Green Lynn**

**Chapter 7**

**#4.00** First Interim application of Levene, Neale, Bender, Yoo & Brill L.L.P. for approval of fees and reimbursement of expenses

Docket 295

**Tentative Ruling:**

Levene, Neale, Bender, Yoo & Brill, L.L.P. ("Levene Neale") general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$99,522.40 and reimbursement of expenses of \$7,986.17, pursuant to 11 U.S.C. § 331, on an interim basis. The Court has not awarded \$4,489.60 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Whitney Green Lynn**

**Chapter 7**

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court's refusal to approve fees for the following services performed by the trustee's counsel with respect to the debtors' real property: "negotiating with the debtors' attorney regarding the sale of the equity to the debtors; [and] reviewing the title report." *Garcia*, 335 B.R. at 726.

With respect to its holding, the BAP explained that "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee. Routine negotiations regarding the sale of real property are properly within the trustee's province. . . . Employment of counsel to assist in the sale did not give counsel a free rein to step into the trustee's shoes and undertake efforts statutorily assigned to the trustee." *Id.* at 727.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the BAP upheld the bankruptcy court's refusal to approve fees for preparation of employment applications, observing that "absent a showing by applicant to the contrary, routine employment applications remain a trustee duty." *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee." *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Whitney Green Lynn**  
as a trustee.

**Chapter 7**

	Category	Date	Timekeeper	Rate	Time	Fee	Description
Case	Administration	2/23/18	KJM	\$565.00	0.10	\$56.50	Analysis of notice of continuance of meeting of creditors
	Claims Admin. and Objections	2/20/18	RB	\$595.00	0.30	\$178.50	Analysis of claims docket; conf with David
	Claims Admin. and Objections	5/16/18	LLS	\$495.00	0.10	\$49.50	Analysis of documents re claims
	Claims Admin. and Objections	6/20/18	LLS	\$495.00	3.5	\$1,732.50	Analysis of claims
	Claims Admin. and Objections	6/25/18	LLS	\$495.00	0.30	\$148.50	Preparation of claim chart
	Claims Admin. and Objections	6/26/18	RB	\$595.00	0.20	\$238.00	Analysis of further updated claims chart and file
	Claims Admin. and Objections	6/29/18	LLS	\$495.00	0.10	\$49.50	Preparation of claim chart
Fee/	Employment Applications	2/22/18	KJM	\$565.00	0.90	\$508.50	Preparation of application to employ accounts
Fee/	Employment Applications	2/22/18	KJM	\$565.00	0.30	\$169.50	Preparation of notice of application to employ accountant and exhibit in support
Fee/	Employment Applications	2/22/18	RB	\$595.00	0.20	\$119.00	Preparation of accountant employment application
Fee/	Employment Applications	2/23/18	KJM	\$565.00	0.40	\$226.00	Preparation of application to employ accountant
Fee/	Employment Applications	2/23/18	RB	\$595.00	0.10	\$59.50	Analysis of further revised application to employ accountant
Fee/	Employment Applications	2/23/18	SR	\$250.00	0.70	\$175.00	Preparation of pleading file application to employ BPE&H and notice of application
Fee/	Employment Applications	3/14/18	SR	\$250.00	0.40	\$100.00	Preparation of pleading lodge order and file declaration of non-opposition re application to employ BPE&H
Fee/	Employment Applications	7/24/18	RB	\$595.00	0.10	\$59.50	Analysis of professional fee app notice and review of file
	Meetings of Creditors	4/27/18	RB	\$595.00	0.10	\$59.50	Analysis of continuance of 341(a) meeting; conf with David
	Meetings of Creditors	6/4/18	RB	\$595.00	0.10	\$59.50	Analysis of notice of continuance of 341(a) meeting
	Meetings of Creditors	7/9/18	RB	\$595.00	0.10	\$59.50	Analysis of notice of conclusion of 341(a) meeting

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

CONT... Whitney Green Lynn

Chapter 7

pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Case Administration	2/26/18	LC	\$250.00	0.40	\$100.00	Set court telephonic appearances for Kurt O. Hunsberger, J.D./CPA and Bernard S. Lynn, Jr. re January 28 hearing via courtcall (multi emails and calls)
Case Administration	2/27/18	SR	\$250.00	0.50	\$125.00	Preparation of pleading file notice of proposed order approving IRS stipulation
Case Administration	2/27/18	SR	\$250.00	0.40	\$100.00	Preparation of pleading file notice of proposed revised sale order

The Court will disallow the following fees because they appear duplicative of other services also billed on February 22, 2018:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Asset Analysis and Recovery	2/22/18	KJM	\$565.00	0.10	\$56.60	Analysis of entered order shortening time on sale motion hearing

The Court will disallow the following fees because they appear duplicative of other services also billed on April 16, 2018:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Fee Employment Applications	4/16/18	RB	\$595.00	0.10	\$59.50	Analysis of entered orders approving employment of LNBYB and BPEH

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Levene Neale is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Levene Neale will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Whitney Green Lynn**

**Chapter 7**

**Debtor(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat  
Yi S Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Ron Bender  
Krikor J Meshefejian  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

**1:16-10045 Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**#5.00** Chapter 7 Trustee's second interim application for compensation and reimbursement of expenses for David Keith Gottlieb

Docket 192

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$7,335.71 and reimbursement of expenses of \$320.85, pursuant to 11 U.S.C. § 331, on an interim basis.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

**1:16-10045 Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**#6.00** Application for payment of Interim fees and/or expenses for Berkeley Research Group, LLC accountant for Chapter 7 Trustee for David Keith Gottlieb

Docket 186

**Tentative Ruling:**

Berkeley Research Group, LLC ("BRG"), accountant to chapter 7 trustee – approve fees of \$14,279.00 and reimbursement of expenses of \$2,517.18, pursuant to 11 U.S.C. § 331, on an interim basis. The Court has not awarded \$108.50 in fees for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

**CONT... Duane Daniel Martin and Tisha Michelle Martin Chapter 7**

electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Fee Application and Bill Preparation	11/30/16	Rowen Dizon	\$155.00	0.40	\$62.00	Processed court filing
Fee Application and Bill Preparation	12/6/16	Rowen Dizon	\$155.00	0.30	\$46.50	Processed mailing of court documents

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by BRG is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and BRG will be so notified.

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT...**

**Duane Daniel Martin and Tisha Michelle Martin**

Monica Y Kim

Jeffrey S Kwong

Beth Ann R Young

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:16-10045 Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**#7.00** Application for payment of interim fees and/or expenses for Levene, Neale, Bender, Yoo & Brill LLP, Attorney for David K Gottlieb, Chapter 7 Trustee

Docket 187

**Tentative Ruling:**

Levene, Neale, Bender, Yoo & Brill, L.L.P. (“Levene Neale”) general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$73,777.75 and reimbursement of expenses of \$1,528.88, pursuant to 11 U.S.C. § 331, on an interim basis. The Court has not awarded \$11,361.25 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

CONT... **Duane Daniel Martin and Tisha Michelle Martin**

Chapter 7

administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Claims Admin and Objections	5/18/17	MYK	\$575.00	0.10	\$57.50	Analysis of POC filed by Franchise Tax Board

The Court will reduce the following fees by 50% because it appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Adjusted Fee	Description
Claims Admin, and Objections	11/2/16	LLS	\$425.00	0.4	\$170.00	\$85.00	Preparation of emails to counsel for secured creditors re secured claims
Claims Admin, and Objections	11/2/16	LLS	\$425.00	2.1	\$892.50	\$446.25	Analysis of claims
Claims Admin, and Objections	11/3/16	LLS	\$425.00	0.6	\$255.00	\$127.50	Preparation of emails re claims issue
Claims Admin, and Objections	11/3/16	LLS	\$425.00	1.3	\$552.50	\$276.25	Analysis of claims

The Court will reduce the following fees by 50% because the amount of time spent on

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

these activities is excessive.

Category	Date	Timekeeper	Rate	Time	Fee	Adjusted Fee	Description
Case Administration	3/9/18	MYK	\$580.00	3.8	\$2,204.00	\$1,102.00	Preparation of motion for findings and sanctions as to residuals
Case Administration	3/11/18	MYK	\$580.00	1.5	\$870.00	\$435.00	Preparation of motion regarding residuals, related communications with trustee and Young
Case Administration	3/12/18	MYK	\$580.00	2.5	\$1,450.00	\$725.00	Preparation of motion regarding residuals, declaration, exhibits and related communications
Case Administration	3/13/18	MYK	\$580.00	1.0	\$580.00	\$290.00	Preparation of motion for resolution of dispute and turnover of residuals, exhibits
Case Administration	3/15/18	MYK	\$580.00	0.5	\$290.00	\$145.00	Preparation of motion regarding residuals, declaration, exhibits and related communications
Fee Employment Applications	11/18/16	MYK	\$575.00	1.6	\$920.00	\$460.00	Analysis of interim fee applications for professionals, related discussions and preparation thereof for LNBYB
Fee Employment Applications	11/21/16	MYK	\$575.00	2.4	\$1,380.00	\$690.00	Preparation of LNBYB interim fee applications, declaration of Kim describing services and costs
Fee Employment Applications	11/29/16	MYK	\$575.00	2.0	\$1,150.00	\$575.00	Preparation of interim fee application of LNBYB, declarations, notice, related discussions as to coverage for hearing
Fee Employment Applications	12/19/16	MYK	\$575.00	0.3	\$172.50	\$86.25	Telephone conference with trustee, professionals regarding order on fees and related emails on hearing and payment
Fee Employment Applications	12/20/16	MYK	\$575.00	0.4	\$230.00	\$115.00	Analysis of fee interim order, hearing thereon, all related issues and payment matters
Fee Employment Applications	12/21/16	MYK	\$575.00	0.7	\$402.50	\$201.25	Analysis of order, revisions to and lodging of order, entry of order, payment of fees and all related emails and discussions thereon

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

CONT...

**Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

Fee/	Employment Applications	12/22/16	MYK	\$575.00	0.5	\$287.50	\$143.75	Analysis of payment of fees to professionals and all related emails and discussion thereon
Other	Litigation	3/22/18	BRY	\$580.00	2.2	\$1,276.00	\$638.00	Preparation of reply ISO motion for turnover
Other	Litigation	3/23/18	BRY	\$580.00	4.1	\$2,378.00	\$1,189.00	Preparation of reply brief ISO motion for turnover
Other	Litigation	3/26/18	BRY	\$580.00	3.8	\$2,204.00	\$1,102.00	Preparation of reply brief re motion for turnover
Other	Litigation	3/28/18	BRY	\$580.00	0.8	\$464.00	\$232.00	Finalize reply re motion for turnover of residuals
Other	Litigation	4/5/18	BRY	\$580.00	0.8	\$464.00	\$232.00	Preparation of proposed order on motion for turnover
Other	Litigation	4/6/18	BRY	\$580.00	0.7	\$406.00	\$203.00	Further work on order granting turnover motion and PPO email to trustee thereon
Other	Litigation	4/8/18	BRY	\$580.00	0.4	\$232.00	\$116.00	Review and revise proposed order granting motion for turnover of residuals and exchange emails thereon; PPO email to atty Lieberman

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Case Administration	11/18/16	JK	\$250.00	0.40	\$100.00	Analysis of court docket re order authorizing LNBYB employment and fee application

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

CONT...

**Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

Case Administration	3/29/18	LC	\$250.00	0.8	\$200.00	Preparation of reply in support of motion to resolve dispute under settlement agreement; e-file; PPO table of contents, table of authorities and service list
Case Administration	4/9/18	LC	\$250.00	0.6	\$150.00	Preparation of order on trustee's motion for turnover of residuals and notice of lodgment of order
Fee/Employment Applications	12/1/16	JK	250.00	0.5	\$125.00	Preparation of e-filing of application for payment of: interim fees and/or expenses

The Court will not allow fees for the following services because they are duplicative of services performed, and fees charged, by another partner.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Fee/Employment Applications	12/21/16	RB	\$595.00	0.3	\$178.50	Analysis of court tentative rulings on fee applications; prep of order for all professionals and related email exchange

Finally, the Court will not allow the following fees at this time. To obtain allowance of these fees, Levene Neale must submit an explanation to the Court about why these fees were incurred.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Case Administration	5/17/18	JSK	\$425.00	2.2	\$935.00	Analysis of research re conversion to chapter 13, and plan requirements

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Levene Neale is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Levene Neale will be so notified.

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#8.00** Application for final fees and/or expenses for Orantes Law Firm P.C.

fr. 9/6/18

Docket 256

**Tentative Ruling:**

The Orantes Law Firm, P.C. (“Applicant”), counsel for the debtor – approve fees of \$9,635.00 and reimbursement of expenses of \$244.47, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved in a final basis. The Applicant may collect 100% of the outstanding approved fees and expenses. The Court has not approved \$1,450.00 in fees for services rendered from January 1, 2018 through March 23, 2018 for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

The Court will not approve the following expenses because they appear to be

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Alfredo Gonzalez Villapando**  
unnecessary and/or excessive.

**Chapter 11**

<b>Date</b>	<b>Description</b>	<b>Fee</b>
1/25/18	Appear at Plan Confirmation Hearing	\$50.00
1/25/18	Appear at Status Conference	\$550.00
1/25/18	Prepare for Plan Confirmation Hearing and Status Report	\$100.00
2/22/18	Prepare Luis Solorzano for Hearing on Fee Application	\$300.00
2/22/18	Prepare for Hearing on Fee Application	\$100.00
2/22/18	Appear at Hearing on Fee Application	\$125.00
2/22/18	Travel to and from Hearing on Fee Application	\$225.00

Appearances were excused for the January 25, 2018 hearings and February 22, 2018 hearing.

Applicant must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#9.00** Blakeley LLP's Second and Final Application for Compensation and Reimbursement of Expenses counsel for Official Committee of Unsecured Creditors

fr. 9/6/18

Docket 205

**Tentative Ruling:**

**No later than September 27, 2018**, pursuant to Local Bankruptcy Rule 2016-(a)(1) (J), Blakeley LLP ("Applicant") must file a client declaration regarding its fee application, or a statement regarding steps taken to obtain such declaration if none is forthcoming. Provided that such declaration is timely filed, the Court will approve fees and expenses as follows:

Applicant, counsel for the Official Committee of Unsecured Creditors of ColorFX, Inc. (the "OCC") – approve fees in the amount of \$47,310.00 and reimbursement of expenses in the amount of \$3,988.26, for the period between August 26, 2017 through August 3, 2018, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis. Applicant may collect 100% of the outstanding approved fees and expenses. The Court will not approve \$6,529.50 in fees for the reasons below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

CONT... ColorFX, Inc.

Chapter 11

circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

The Court will reduce the following fees because, rather than attending the hearings in person, Applicant could have appeared telephonically. In both instances, the posted tentative rulings were in the OCC’s favor, and there were no objections to the disclosure statement.

Category	Date	Timekeeper	Description	Rate	Time	Fee	Adjusted Fee
CLAIMS ADMIN & OBJECTIONS	7/19/18	RAC	Travel to and attend hearing on claims objection of Davidian, and meeting with Davidian after the hearing	\$395.00	5.50	\$2,172.50	\$592.50
DISC STMT & PLAN OF REORG	3/29/18	RAC	Prepare for, and attend disclosure statement hearing	\$395.00	5.50	\$2,172.50	\$592.50

The following fees aggregate to \$21,369.50. In light of the limited complexity of the chapter 11 plan and the fact that the debtor’s business had already been sold, these fees appear to be excessive. Consequently, the Court will allow \$18,000.00 of the following fees.

Category	Date	Timekeeper	Description	Rate	Time	Fee
DISC STMT & PLAN OF REORG	10/20/17	RAC	Begin revision to disclosure statement	\$395.00	1.6	\$632.00
DISC STMT & PLAN OF REORG	10/26/17	RAC	Begin revisions to the disclosure statement and plan	\$395.00	3.30	\$1,303.50
DISC STMT & PLAN OF REORG	11/23/17	RAC	Begin to draft new disclosure statement	\$395.00	2.80	\$1,106.00
DISC STMT & PLAN OF REORG	11/30/17	RAC	Continue redraft of disclosure statement	\$395.00	6.4	\$2,528.00
DISC STMT & PLAN OF REORG	12/12/17	RAC	Continue drafting amended plan	\$395.00	2.90	\$1,145.50

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**ColorFX, Inc.**

**Chapter 11**

DISC STMT & PLAN OF REORG	12/13/17	RAC	Draft preference analysis to first amended disclosure statement. (1.5) Continue work on disclosure statement. (2.8)	\$395.00	4.30	\$1,698.50
DISC STMT & PLAN OF REORG	12/21/17	RAC	Begin revisions to the disclosure statement based on insider contribution	\$395.00	2.6	\$1,027.00
DISC STMT & PLAN OF REORG	1/25/18	RAC	Draft exhibits for disclosure statement	\$395.00	4.1	\$1,619.50
DISC STMT & PLAN OF REORG	1/28/18	RAC	Continue work on disclosure statement	\$395.00	6.30	\$2,488.50
DISC STMT & PLAN OF REORG	1/29/18	RAC	Continue work on disclosure statement and plan	\$395.00	8.20	\$3,239.00
DISC STMT & PLAN OF REORG	1/30/18	RAC	Complete disclosure statement and plan and exhibits thereto	\$395.00	5.80	\$2,291.00
DISC STMT & PLAN OF REORG	1/30/18	RAC	Finalize disclosure statement and plan and exhibits thereto	\$395.00	5.80	\$2,291.00

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#10.00** Motion for final allowance of first interim fee award for  
Lewis R. Landau, attorney for debtor and debtor in possession

Docket 210

**Tentative Ruling:**

All fees and expenses approved on an interim basis are approved on a final basis. The applicant may collect 100% of the outstanding approved fees and expenses.

The applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and applicant will be so notified.

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

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

10:30 AM

1:17-11136 Capri Coast Capital, Inc.

Chapter 11

#11.00 First and final application of Jeffrey S. Shinbrot, APLC, General Reorganization Counsel to chapter 11 Debtor for approval of compensation in the amount of \$114,597.00, and reimbursement of expenses in the amount of \$1632.42 for the period February 1, 2018 through September 20, 2018

Docket 374

**Tentative Ruling:**

Jeffrey S. Shinbrot, APLC ("Applicant"), general counsel to chapter 11 debtors and debtors in possession – approve fees in the amount of \$114,597.00 and reimbursement of expenses in the amount of \$1,632.42, pursuant to 11 U.S.C. § 330, on a final basis.

On August 27, 2018, Applicant filed a *First and Final Application of Jeffrey S. Shinbrot, APLC, General Counsel to Chapter 11 Debtor for Approval of Compensation in the Amount of \$114,597.00, and Reimbursement of Expenses in the Amount of \$1,632.42 for the Period February 1, 2018 Through September 20, 2018* (the "Application") [doc. 374]. On September 7, 2018, Creditor John Kochakji ("Creditor") filed an untimely opposition to the *Motion to Dismiss and Final Fees and Expenses* (the "Opposition") [doc. 377].

In the Opposition, Creditor argues that he came into this case recently as a creditor and needs more time to evaluate the administrative claim within the context of benefit to creditors and the estate. Creditor did not make any substantive objections to the nature, extent nor time entries of the fees. Creditor merely requests more time. However, Creditor was properly served with notice as required under Local Bankruptcy Rule 9013-1(d)(2). Creditor had sufficient time to make substantive objections to the Application, but did not. The Court will not continue this hearing.

The Applicant must submit the order within seven (7) days.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11495 Steven Nia**

**Chapter 7**

**#12.00** Chapter 7 Trustee's first interim application for compensation and reimbursement of expenses

Docket 185

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$4,226.90 and expenses of \$0.47, pursuant to 11 U.S.C. § 331, on an interim basis.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11495 Steven Nia**

**Chapter 7**

**#13.00** First interim application by counsel for Chapter 7 Trustee for compensation and reimbursement of expenses for the period of December 13, 2017 through August 21, 2018

Docket 186

**Tentative Ruling:**

Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois") general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$34,300.00 and reimbursement of expenses of \$469.47, pursuant to 11 U.S.C. § 331, on an interim basis.

Lewis Brisbois must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Lewis Brisbois is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Lewis Brisbois will be so notified.

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

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11972 German Alberto Rauda Paredes and Adilia Edith Zepeda**

**Chapter 7**

**#14.00 Trustee's Final Report and Applications for Compensation**

David K. Gottlieb, Chapter 7 Trustee

Docket 33

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$153.72 and expenses of \$59.29, pursuant to 11 U.S.C. § 330, on a final basis.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

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

**Debtor(s):**

German Alberto Rauda Paredes

Represented By  
Scott Kosner

**Joint Debtor(s):**

Adilia Edith Zepeda De Rauda

Represented By  
Scott Kosner

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Thursday, September 20, 2018

Hearing Room 303

10:30 AM

1:18-10417 Deborah Lois Adri

Chapter 11

#15.00 First Interim application of Law Offices of Robert M Yaspan, for compensation and reimbursement of expenses incurred as counsel to debtor-in-possession

fr. 8/16/18; 9/6/18

Docket 136

**Tentative Ruling:**

Law Offices of Robert M. Yaspan (“Applicant”), counsel to the debtor and debtor in possession – approve fees in the amount of \$91,416.77 and reimbursement of expenses in the amount of \$5,982.08, pursuant to 11 U.S.C. § 331, on an interim basis.

Applicant may collect 85% of the approved fees and 100% of the approved expenses at this time. Applicant may draw down on its retainer in satisfaction of the foregoing approved fees and expenses. The Court has not allowed fees in the amount of \$8,358.50 for the reasons set forth below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Thursday, September 20, 2018

Hearing Room 303

10:30 AM

CONT... Deborah Lois Adri

Chapter 11

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

The Court will reduce the following fees, as they appear excessive in light of Applicant's experience, and the relative complexity of the work performed compared to the time billed:

Category	Date	Timekeeper	Description	Time	Fee	Adjusted Time	Adjusted Fee
Schuller	5/11/2018	RMY	Law research re 2004 examination	2.0	\$1,100.00	1.0	\$550.00
Schuller	5/30/2018	DB	Draft reply brief to 2004 examination	5.4	\$2,349.00	3.4	\$1,479.00
Schuller	6/6/2018	DB	Draft opposition to motion to extend time to file complaint for non-dischargeability	1.0	\$435.00	0.4	\$174.00
Schuller	6/7/2018	DB	Draft opposition to motion to extend	3.2	\$1,392.00	1.6	\$696.00

In light of the Court's disallowance of the claim filed by Schuller & Schuller ("Schuller"), the Court will reduce the following fees arising from the discovery dispute with Schuller. The debtor listed Schuller as holding a disputed claim. Rather than engaging in extensive discovery litigation with Schuller over its disputed claim, the debtor could have objected to Schuller's application for 2004 examination on the basis of standing. If that objection had been sustained at the outset, it would not have been necessary for the debtor to file a motion for protective order, or for the parties to prepare their joint discovery stipulation.

Category	Date	Timekeeper	Description	Time	Fee	Adjusted Time	Adjusted Fee
Schuller	5/10/2018	DB	Research re filing of protective order	0.8	\$348.00	0.40	\$174.00
Schuller	5/10/2018	DB	Draft protective order	0.6	\$261.00	0.30	\$130.50
Schuller	5/11/2018	DB	Draft protective order	6.3	\$2,740.50	3.15	\$1,370.25
Schuller	5/11/2018	DB	Draft Adri dec. in support of protective order	0.3	\$130.50	0.15	\$65.25
Schuller	5/11/2018	DB	Draft Yaspan dec. in support of protective order	0.4	\$174.00	0.20	\$87.00
Schuller	5/11/2018	DB	Draft Brand dec. in support of protective order	0.2	\$87.00	0.10	\$43.50
Schuller	5/11/2018	DB	Draft OST	0.4	\$174.00	0.20	\$87.00

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 303**

10:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

Schuller	5/17/2018	RMY	Review protective order draft	0.6	\$330.00	0.30	\$165.00
Schuller	5/17/2018	RMY	Conference with Debbie Brand re protective order	0.3	\$165.00	0.15	\$82.50
Schuller	5/29/2018	DB	Meeting with RMY to discuss reply to protective order	0.2	\$87.00	0.10	\$43.50
Schuller	6/5/2018	DB	Research re reply to motion for protective order	1.0	\$435.00	0.50	\$217.50
Schuller	6/7/2018	RMY	Attend hearing on Protective Order	1.4	\$770.00	0.70	\$385.00
Schuller	6/21/2018	DB	Research and draft stipulation	1.3	\$565.50	0.65	\$282.75
Schuller	6/21/2018	RMY	Work on stipulation re 2004 production	1.5	\$825.00	0.75	\$412.50
Schuller	6/25/2018	DB	Draft joint stipulation	3.0	\$1,305.00	1.5	\$652.50
Schuller	6/26/2018	DB	Draft joint stipulation	2.5	\$1,087.50	1.3	\$543.75
Schuller	6/27/2018	DB	Emails with Shai Oved re stipulation	0.2	\$87.00	0.1	\$43.50
Schuller	6/28/2018	DB	Emails with Shai Oved re stipulation	0.4	\$174.00	0.2	\$87.00
Schuller	6/28/2018	DB	Review changes made by Shai Oved to stipulation and additional arguments	1.4	\$609.00	0.7	\$304.50
Schuller	7/9/2018	DB	Review documents for production	0.3	\$141.00	0.2	\$70.50
Schuller	7/10/2018	DB	Telephone call with Deborah Adri re documents	0.2	\$94.00	0.1	\$47.00
Schuller	7/10/2018	DB	Final review of documents being sent	0.2	\$94.00	0.1	\$47.00
Schuller	7/18/2018	DB	Review tentative ruling for protective order	0.1	\$47.00	0.1	\$23.50
Schuller	7/19/2018	DB	Review additional documents for production re Schuller	0.3	\$141.00	0.2	\$70.50
Schuller	7/24/2018	DB	Telephone call from Deborah Adri re updating ordering documents for production	0.1	\$47.00	0.1	\$23.50

In addition, the Court may later reassess fees incurred for work performed on the appeal of the arbitration award, in light of the outcome of such appeal.

Applicant must submit the order within seven (7) days of the hearing.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 303**

---

10:30 AM

**CONT... Deborah Lois Adri**

**Chapter 11**

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#16.00** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18,  
6/14/18 stip; 7/19/18

Docket 1

**Tentative Ruling:**

See calendar no. 30.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11545 Hampton Heights Inc**

**Chapter 11**

**#17.00** Status conference re chapter 11 case

fr. 8/3/17; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18; 6/14/18; 7/19/18

Docket 1

**Tentative Ruling:**

See calendar no. 30.

**Party Information**

**Debtor(s):**

Hampton Heights Inc

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11546 Ravello Ventures Inc.**

**Chapter 11**

**#18.00** Status conference re chapter 11 case

fr. 8/3/10; 8/10/17(stip); 8/24/17 (stip); 9/14/17(stip);  
10/19/17; 12/14/17; 2/8/17; 5/17/18; 6/7/18; 6/14/18; 7/19/18

Docket 1

**Tentative Ruling:**

See calendar no. 30.

**Party Information**

**Debtor(s):**

Ravello Ventures Inc.

Represented By  
Peter C Bronstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11851 Amalfi Assets, Inc.**

**Chapter 11**

**#19.00** Status conference re chapter 11 case

fr. 9/7/14(stip) ; 9/14/17(stip); 10/19/17; 12/14/17;  
2/8/18; 6/7/18; 6/7/18; 6/14/18; 7/19/18

Docket 1

**Tentative Ruling:**

See calendar no. 30.

**Party Information**

**Debtor(s):**

Amalfi Assets, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

1:00 PM

1:17-11965 Carmit Benbaruh

Chapter 13

**#20.00** Order to show cause (1) requiring William Hill, aka Bill Hill, to personally appear and explain his connection to this case; (2) Why William Hill, aka Bill Hill, should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110; (3) Requiring Burce Rorty to personally appear and explain by whome he was hired to appear in this case and what fees, if any, he received; and (4) Requiring Carmit Benbaruh to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18; 7/5/18; 8/17/18

Docket 1

**Tentative Ruling:**

On April 24, 2018, the Court entered an *Order to Show Cause (1) Requiring William Hill, AKA Bill Hill, to Personally Appear and Explain His Connection to This Case; (2) Why William Hill, AKA Bill Hill, Should Not Be Fined and Ordered to Disgorge Fees for Violating 11 U.S.C. § 110; (3) Requiring Bruce Rorty to Personally Appear and Explain by Whom He was Hired to Appear in This Case and What Fees, If Any, He Received; and (4) Requiring Carmit Benbaruh to Personally Appear and Explain Who Prepared Her Bankruptcy Documents and the Amount, If Any, She Paid for Such Services.* (the "OSC") [doc. 79]. The Court held several hearings on the OSC.

On August 24, 2018, the United States trustee (the "U.S. Trustee") filed a statement as to the OSC (the "Statement") [doc. 115]. In the Statement, the U.S. Trustee states that based on the testimony provided at the OSC hearings and the entire record in the case, the U.S. Trustee does not believe that William Hill was acting as a bankruptcy petition preparer pursuant to 1 U.S.C. § 110 in this case. Accordingly, the U.S. Trustee will not be seeking disgorgement of fees, fines, and/or sanctions in this case.

In light of the Statement and the testimony at the OSC hearings, the OSC is discharged.

Appearances on September 20, 2018 are excused.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Carmit Benbaruh**

**Chapter 13**

**Debtor(s):**

Carmit Benbaruh

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

1:00 PM

1:17-12131 Virgillo Armando Cerna Choto

Chapter 7

#21.00 Order that William Hill, aka Bill Hill, personally appear and show cause, if any, as to why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. §110

fr. 5/15/18; 6/8/18; 7/5/18; 8/17/18

Docket 45

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 8/28/18 [Dkt.67]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

1:00 PM

1:17-12131 Virgillo Armando Cerna Choto

Chapter 7

#22.00 Status conference re: Leslie Richards' motion for reconsideration to vacate order for sanctions/disgorgement

fr.4/5/18; 5/15/18; 6/8/18; 7/5/18; 8/17/18

Docket 30

**Tentative Ruling:**

Grant.

On February 20, 2018, Leslie Richards filed a *Motion for Reconsideration to Vacate Order for Sanctions/Disgorgement* (the "Motion") [doc. 30]. The Court held several hearings on the Motion.

On August 28, 2018, the Court entered an *Order Approving Stipulation Between U.S. Trustee and William Hill Regarding Order to Show Cause That William Hill, AKA Bill Hill, Personally Appear and Show Cause, if Any, as to Why He Should Not Be Fined and Ordered to Disgorge Fees for Violating 11 U.S.C. § 110* (the "Order") [doc. 67]. As required by the Order, William Hill will disgorge \$1,835.00 in fees back to the debtor.

In light of the Order and the testimony on the record at the August 17, 2018 hearing, the Court will grant the Motion.

The Court will prepare the order.

Appearances on September 20, 2018 are excused.

**Party Information**

**Debtor(s):**

Virgillo Armando Cerna Choto

Represented By  
Leslie Richards

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

1:00 PM

1:17-13183 Mary F Kimbell

Chapter 13

- #23.00 Order to show cause  
(1) Requiring William Hill, aka Bill Hill, to personally appear and explain his connection to the case  
(2) Requiring William Hill, aka Bill Hill to explain why he should not be fined and ordered to disgorge fees for violating 11 U.S.C. § 1101  
(3) Requiring Mary F. Kimbell to personally appear and explain who prepared her bankruptcy documents and the amount, if any, she paid for such services

fr. 5/15/18; 6/8/18; 7/5/18; 8/17/18

Docket 23

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 8/27/18 [Dkt. 38]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mary F Kimbell

Represented By  
Leslie Richards

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#24.00** Disclosure statement hearing in support of plan of reorganization

Docket 49

**Tentative Ruling:**

Proposed dates and deadlines regarding "Individual Debtor's Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Individual Debtor's Disclosure Statement in Support of Plan of Reorganization:"

Hearing on confirmation of the Plan: **November 15, 2018 at 2 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **September 28, 2018.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **October 26, 2018.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **November 5, 2018.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Eduardo Ablan Jacinto**

**Chapter 11**

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#25.00** Status conference re: chapter 11 case

fr. 5/3/18; 8/16/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11801 Rudex Broadcasting Limited Corp.**

**Chapter 11**

**#26.00** Status conference re chapter 11 case

Docket 1

**Tentative Ruling:**

On January 22, 2014, Rudex Broadcasting Limited Corp. ("Debtor") filed a voluntary chapter 11 petition (the "First Case") [1:14-bk-10311-VK]. Debtor was represented by Michael D. Kwasigroch. On February 21, 2014, the Court entered an order dismissing the First Case for failure to file schedules and statements timely [1:14-bk-10311-VK, doc. 11].

On May 7, 2015, Debtor filed another voluntary chapter 11 petition (the "Second Case") [1:15-bk-11603-MT]. Debtor was again represented by Mr. Kwasigroch. On July 23, 2015, the Court entered an order dismissing the Second Case for Debtor's failure to provide required information to the U.S. Trustee [1:15-bk-11603-MT, doc. 16].

On July 18, 2018, Debtor filed a third voluntary chapter 11 petition, initiating Debtor's current bankruptcy case (the "Third Case"). Debtor once again is represented by Mr. Kwasigroch. On August 16, 2018, the Court entered an order [doc. 27] setting an initial status conference and requiring Debtor to file a status report, supported by evidence, no later than September 6, 2018. Contrary to the Court's order, Debtor has not filed a status report.

In addition, on August 21, 2018, creditor Luis Crescitelli filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 33]. Through the RFS Motion, Mr. Crescitelli sought to pursue his nonbankruptcy rights to obtain possession of property which Debtor leased pursuant to a month-to-month tenancy. Debtor did not oppose the RFS Motion. On September 12, 2018, the Court held a hearing on the RFS Motion. Debtor did not appear. On September 13, 2018, the Court entered an order granting the RFS Motion [doc. 39].

In light of Debtor's repetitive chapter 11 filings, and its repetitive failure to comply with its obligations as a debtor and debtor in possession, the Court will dismiss this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Rudex Broadcasting Limited Corp. Chapter 11**

case with a 180-day bar pursuant to 11 U.S.C. §§ 105(a) and 349(a). The Court will retain jurisdiction regarding matters arising under 11 U.S.C. §§ 110, 329 or 362 and to award any appropriate judgment in favor of the United States Trustee.

The Court will prepare the order.

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

**Debtor(s):**

Rudex Broadcasting Limited Corp.

Represented By  
Michael D Kwasigroch

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:09-20792 Mehdy Gharachehdaghy and Mahnaz Aalam

Chapter 7

#27.00 Debtors' motion to avoid lien under 11 U.S.C. sec. 522(f)  
real property

Docket 78

**Tentative Ruling:**

**I. BACKGROUND**

On August 20, 2009, Mehdy Gharachehdaghy and Mahnaz Aalam ("Debtors") filed a voluntary chapter 7 petition. In their schedule A [doc. 13], Debtors claimed an interest in real property located at 18747 Wells Drive, Tarzana, California (the "Property") and valued the Property at \$1,700,000. Debtors did not claim an exemption in the Property in their schedule C. In their schedule D, Debtors listed two encumbrances against the Property: (A) a first priority deed of trust in favor of EMC Mortgage ("EMC") in the amount of \$1,600,000; and (B) a second priority deed of trust in favor of GMAC Mortgage ("GMAC") in the amount of \$246,397.

Debtors did not include the Law Offices of Moghadami & Sadig (the "Law Offices") in their schedules and did not provide notice of the bankruptcy case to the Law Offices. On December 3, 2009, the chapter 7 trustee filed the *Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Notice of Assets") [doc. 28] and set a claims bar date of March 8, 2010. The chapter 7 trustee did not provide notice of the claims bar date to the Law Offices.

On February 8, 2010, Debtors received their discharge [doc. 36]. On December 9, 2011, Debtors' bankruptcy case was closed. On June 4, 2018, Debtors filed a motion to reopen their bankruptcy case (the "Motion to Reopen") [doc. 74]. On June 26, 2018, the Court entered an order granting the Motion to Reopen [doc. 76].

On July 25, 2018, Debtors filed a motion to avoid the Law Offices' lien under 11 U.S.C. § 522(f) (the "Motion") [doc. 78]. On August 8, 2018, the Law Offices filed an opposition to the Motion (the "Opposition") [doc. 79], asserting that Debtors did not provide enough evidence of the amounts owed to EMC and GMAC as of the petition date and that the debt owed to the Law Offices is nondischargeable, such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

that the Law Offices would be able to record another abstract of judgment even if Debtors avoid their lien. On August 23, 2018, the Court entered an order setting the Motion for hearing (the "Hearing Order") [doc. 80]. In the Hearing Order, the Court instructed Debtors to file and serve written notice of the hearing on the Law Offices no later than September 6, 2018. The Court also instructed Debtors to file and serve any response to the Opposition by September 13, 2018.

On August 30, 2018, Debtors timely filed a notice of the hearing [doc. 83]. On September 13, 2018, Debtors filed an amended schedule C [doc. 84], claiming a \$1.00 exemption in the Property. On the same day, Debtors filed a reply to the Opposition [doc. 85], attaching an appraisal valuing the Property, as of the petition date, at \$1,600,000.

## **II. ANALYSIS**

First, Debtors do not include evidence of the amount owed to EMC or GMAC as of the petition date. The Court will cannot properly assess the equity in the Property until Debtors provide evidence of the loan balances as of the petition date. The Court will continue this hearing for Debtors to supplement the Motion with this information.

If Debtors provide the required evidence, the Court notes that Debtors may avoid a lien that is based on a nondischargeable debt. Debtors apparently did not provide notice to the Law Offices of Debtors' bankruptcy case. Pursuant to 11 U.S.C. § 523(a)(3), a discharge does not discharge an individual debtor from any debt—

- (3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
  - (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
  - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT...

**Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request....

Here, Debtors acknowledge that they did not provide notice of their bankruptcy case to the Law Offices. Based on the record before the Court, it appears the Law Offices did not receive notice of the bankruptcy prior to March 8, 2010, the claims bar date. The record also does not demonstrate that the Law Offices had actual knowledge of Debtors' bankruptcy filing.

Assuming the debt owed to the Law Offices is nondischargeable, despite the Law Offices' contention, the Court still may avoid the lien. *See In re Farr*, 278 B.R. 171 (B.A.P. 9th Cir. 2002) (citing *Walters v. U.S. Nat'l Bank in Johnstown*, 879 F.2d 95 (3d Cir. 1989) (finding that "*Walters* is consistent with most case law holding that liens resulting from nondischargeable debts are avoidable under § 522(f) if they impair the debtor's exemption."); and *In re Hunnicutt*, 457 B.R. 464-65 (Bankr. D.S.C. 2011) ("Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt.") (collecting cases).

To the extent Debtors have claimed a valid exemption (the deadline to object to Debtors' exemption has not yet expired), even the Law Offices' presumably nondischargeable debt may be avoided if it impairs Debtors' exemption. The Law Offices next assert that, even if their lien is avoided, because the debt owed to the Law Offices is nondischargeable, the Law Offices will be able to obtain another lien against the Property. However, neither party discusses the application of 11 U.S.C. § 522(c). Pursuant to 11 U.S.C. § 522(c)—

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

- (1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT...

**Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

- (2) a debt secured by a lien that is—
- (A)
- (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
- (ii) not void under section 506(d) of this title; or
- (B) a tax lien, notice of which is properly filed;
- (3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or
- (4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

Two cases include facts relevant to this case. In *Farr*, the debtor filed a chapter 7 petition and claimed an exemption in his residence. *Farr*, 278 B.R. at 173. Subsequently, a creditor obtained a nondischargeability judgment against the debtor under 11 U.S.C. § 523(a)(2)(A). *Id.* After the debtor received his discharge, the creditor recorded an abstract of judgment, creating a lien against the debtor's residence. *Id.*, at 174. The creditor then sought authority by the bankruptcy court to enforce its lien through a sale of the residence. *Id.*

The bankruptcy court denied the motion, holding that § 522(c) "protected [the debtor's] entire residence from a lien for the type of nondischargeable debt held by" the creditor. *Id.* Despite the bankruptcy court's ruling, the judicial lien was not released and remained of record. *Id.* Later, the debtor sought to sell his residence and, because the lien remained attached to the residence, the debtor moved to hold the creditor in contempt for refusing to voluntarily release its lien. *Id.* The creditor argued

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT... **Mehdy Gharachehdaghy and Mahnaz Aalam** Chapter 7

that there was nonexempt equity in the residence and that its lien properly attached to the nonexempt equity. *Id.* The bankruptcy court disagreed, again holding that § 522(c) protected the debtor's entire residence. *Id.* The creditor appealed. *Id.*

On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") first discussed the application of § 522(c) in general:

Section 523, which is incorporated in part by § 522(c), provides an exception from discharge for certain types of debts. Section 522(c) then specifies certain nondischargeable debts which may be pursued against a debtor's exempted property. These include debts for taxes (§ 523(a)(1)), alimony, maintenance or support (§ 523(a)(5)), debts of the type described in § 523(a)(4) and (a)(6) owed to federal depositories, or debts in connection with educational financial assistance fraud.

The legislative history of this section also shows that it was enacted to insulate exempt property from any nondischargeable prepetition debts which are not listed as exceptions. *See* S.Rep. No. 95-989, at 76 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5862; H.R.Rep. No. 95-595, at 361 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6317.

Section 522(c)(2) further denies a debtor's exemption for valid liens, such as tax liens and liens that have not been avoided in bankruptcy. The rule of *Long v. Bullard*, 117 U.S. 617, 620-21, 6 S.Ct. 917, 29 L.Ed. 1004 (1886), that unchallenged liens pass through bankruptcy unaffected, was codified in § 522(c) to uphold the enforcement of valid liens on both exempt and nonexempt property. H.R.Rep. No. 95-595, *supra*, at 361. A lien creditor, whose lien has not been avoided in bankruptcy, is generally free to pursue its *in rem* remedies under state law, subject to the provisions of the automatic stay in § 362(a). *Johnson v. Home State Bank*, 501 U.S. 78, 82-84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991).

Thus, § 522(c) performs both a protective function, by preserving the exemption if nondischargeable claims other than those specifically excepted by § 522(c) are sought to be enforced against exempt

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT...

**Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

property, and a limiting function, by denying the exemption protections for certain kinds of nondischargeable claims and unavoids liens.

*Id.*, at 176–77. The BAP disagreed with the bankruptcy court’s holding that the creditor’s lien could not attach to the nonexempt equity in the debtor’s residence, noting that “[i]n this case, ‘property exempted’ in § 522(c) means only the \$100,000 homestead exemption allowed by California exemption law.” *Id.*, at 177. Because there was nonexempt equity in the debtor’s residence, and the lien could not be avoided under 11 U.S.C. § 522(f), the BAP held that the creditor’s lien could attach to the nonexempt equity under 11 U.S.C. § 522(c)(2). *Id.*, at 177-81.

After *Farr*, a bankruptcy court within this circuit considered similar facts. *See In re Feathers*, 2015 WL 1598087 (Bankr. N.D. Cal. 2015). In *Feathers*, the Securities and Exchange Commission (the “SEC”) had a pending action against the debtor at the time the debtor filed his chapter 7 petition. *Id.*, at \*1. Postpetition, the district court entered judgment in favor of the SEC and, subsequently, the SEC obtained a judgment of nondischargeability under 11 U.S.C. § 523(a)(19). *Id.*

After the debtor received his discharge and the debtor’s case was closed, the SEC recorded an abstract of judgment, thereby attaching a judicial lien to the debtor’s real property. *Id.* The debtor then reopened his bankruptcy case and moved for avoidance of the SEC’s lien. *Id.* The bankruptcy court held that the debtor could avoid the lien despite the fact that the judicial lien was recorded postpetition. *Id.*, at \*1-2. As part of its assessment, the court found:

Reviewed in the context of § 522 as a whole, other provisions “set forth limitations as to when exemptions may or may not trump a creditor’s claim or lien rights, but they focus on the nature and timing of the claim, rather than the time when the lien affixed.” *Id.* The general rule is that exempt property will not be liable for pre-petition debts but § 522(c) sets forth four exceptions. None of these exceptions apply to the SEC’s claim. Further, the fact that Congress created certain exceptions, implies that only those exceptions and no others were intended.

*Id.*, at \*2. After holding that the timing of the lien attachment was not relevant to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam Chapter 7**

question before the court, the court held that the SEC's lien could be avoided under § 522(f):

The plain language of Bankruptcy Code § 522(c) makes clear that property exempted during a bankruptcy case may not be required to satisfy debts that arose prior to the bankruptcy case: "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case." The Code Section then lists four exceptions to the general rule. One of the exceptions is for a debt secured by a lien that is not avoided pursuant to § 522(f). As the SEC's judgment lien may be avoided, this exception does not apply, and Feathers is entitled to his homestead exemption.

*Id.*

This case is similar to *Feathers*. Here, the debt which gave rise to the lien is a prepetition debt. The Law Offices recorded an abstract of judgment after Debtors' discharge. Subsequently, Debtors seek to avoid the lien on the basis that the lien impairs their homestead exemption. Although the debt owed to the Law Offices may be nondischargeable under 11 U.S.C. § 523(a)(3), the lien against the Property may still be avoided under 11 U.S.C. § 522(f). Moreover, under 11 U.S.C. § 522(c), the lien may not attach to the exempt portion of the Property, either "during *or after* the case." 11 U.S.C. § 522(c) (emphasis added). If Debtors provide sufficient evidence that there is no nonexempt equity in the Property and if Debtors have a valid claim of exemption in the Property, then the Court may avoid the Law Offices' lien, and the Law Offices will not be able to record another abstract of judgment against the Property for a prepetition debt.

### **III. CONCLUSION**

The Court will continue the hearing on the Motion to **2:00 p.m. on November 8, 2018**. No later than **October 18, 2018**, Debtors must file and serve a supplemental declaration with evidence of the amounts owed to EMC and GMAC as of the petition date. No later than **October 25, 2018**, the Law Offices may file and serve a response

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**      **Mehdy Gharachehdaghy and Mahnaz Aalam**  
to the supplemental declaration.

**Chapter 7**

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

**Debtor(s):**

Mehdy Gharachehdaghy

Represented By  
Faith A Ford

**Joint Debtor(s):**

Mahnaz Aalam

Represented By  
Faith A Ford

**Trustee(s):**

David R Hagen (TR)

Represented By  
Scott Lee  
Brad Krasnoff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14742 BaseNet, LLC**

**Chapter 7**

**#28.00** Chapter 7 Trustee's Motion for order authorizing and approving stipulation by and between David K. Gottlieb, Chapter 7 Trustee, and Jack N. Rudel, as Trustee of the ARH Trust, regarding allowance of general unsecured claim

Docket 232

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

BaseNet, LLC

Represented By  
John D Faucher  
Edward P Kerns

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#29.00** U.S. Trustee's Motion under 11 U.S.C. § 1112(b) to dismiss or convert case  
fr. 6/7/18, 6/14/18 stip; 7/19/18(stip)

Docket 271

**Tentative Ruling:**

In light of the Court's tentative ruling on the debtors' motion to dismiss their chapter 11 cases (calendar no. 30), the Court will deny this motion as moot.

The debtors must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:17-11136 Capri Coast Capital, Inc.

Chapter 11

#30.00 Motion For Dismissal of Chapter 11 Cases and Approval of Proposed Distribution of Sale Proceeds of The Estates In The Order of Priority Set By The Bankruptcy Code

Docket 370

**Tentative Ruling:**

Grant, for the reasons discussed below.

**I. BACKGROUND**

On April 28, 2017, Capri Coast Capital, Inc. ("Capri") filed a voluntary chapter 11 petition. On August 2, 2017, the Court entered an order granting the Debtor's motion for joint administration of its case with the cases of Ravello Ventures, Inc. ("Ravello"), Amalfi Assets, Inc. ("Amalfi"), and Hampton Heights, Inc. ("Hampton") (collectively, the "Debtors") [doc. 43]. John Kochakji ("Creditor") was not listed as a creditor in the schedules filed in each of the Debtors' cases.

On September 21, 2017, the Court entered an order setting the bar date for filing proofs of claim in the Debtors' cases (the "Bar Date Order") [doc. 108]. The Bar Date Order set December 1, 2017 as the deadline for filing proofs of claim.

On October 2, 2017, the Debtors filed and served the *Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case [LBR 3003-1]* (the "Bar Date Notice") [doc. 118]. The attached proof of service does not indicate that Creditor was served with the Bar Date Notice.

On February 23, 2018, Creditor filed an action in state court against Capri and other defendants, asserting causes of action including breach of contract, failure to pay wages, retaliation, and wrongful termination (the "State Court Action"). (Doc. 335, Exh. 1.) Before filing the State Court Action, on November 30, 2016, Creditor had filed a claim with the California Labor Commission. (Doc. 335, Exh. 3, at p. 4.)

On February 28, 2018, the Debtors filed a motion to approve the sale of substantially

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

all of the Debtors' assets (the "Sale Motion") [doc. 221]. On April 5, 2018, the court entered an order granting the Sale Motion [doc. 257]. The Debtors received approximately \$216,750 in proceeds from the closing of the sale.

On July 14, 2018, Creditor filed a *Motion to Allow Late-Filed Claim* (the "Claim Allowance Motion") [doc. 335]. On August 23, 2018, the Court entered an order granting the Claim Allowance Motion [doc. 367].

On July 26, 2018, the Court entered an *Order Granting Motion of Landlord Golden Spectrum Property, LLC, Regarding the Massage Envy Palmdale Location (Hampton Heights, Inc.), for Allowance and Immediate Payment of Administrative Claim for Unpaid-Post Petition Rent* (the "April Rent Claim") [doc. 345]. The April Rent Claim approved the payment of administrative rent in the amount of \$1,953.33. As such, the Debtors currently have \$214,796.67 of the sale proceeds remaining.

Also On July 26, 2018, the Court entered an *Order Approving Apportionment of Sale Proceeds Among Chapter 11 Debtors* [doc. 346]. The Court approved the proceeds from the sale to be apportioned as follows:

- a. Hampton - \$0
- b. Amalfi - \$7,500 fixed assets; \$25,012.50 general intangibles/goodwill;
- c. Capri - \$15,000 fixed assets; \$65,197.50 general intangibles/goodwill; and
- d. Ravello - \$7,500 fixed assets; \$96,540 general intangibles/goodwill

On August 27, 2018, the Debtors filed a *Motion for Dismissal of Chapter 11 Cases and Approval of Proposed Distribution of Sale Proceeds of the Estates in the Order of Priority Set by the Bankruptcy Code* (the "Motion") [doc. 370].

On September 7, 2018, Creditor filed an untimely opposition to the Motion (the "Opposition") [doc. 377]. In the Opposition, Creditor opposes case dismissal to allow his State Court Action to resolve to determine his proof of claim amount and nondischargeability. Creditor contends that by having this case continue, he can amend his proof of claim and potentially have it deemed nondischargeable and elevated from a nonpriority unsecured claim to a priority unsecured claim. Creditor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT... **Capri Coast Capital, Inc.**

**Chapter 11**

alleges that if the case is dismissed, he stands to be financially harmed by the uncertainty to find assets to collect against the Debtors' principal alone.

On September 13, 2018, the Debtors filed a reply to the Opposition (the 'Reply') [doc. 379].

**II. DISCUSSION**

*A. 11 U.S.C. § 1112(b)*

11 U.S.C. § 1112(b) provides in pertinent part:

- (b) (1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, 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, if the movant establishes cause. . . .

11 U.S.C. § 1112(b)(1).

"[T]he Code contains a non-exclusive list of examples of cause in § 1112(b)(4)." *In re Serron Investments*, 2012 WL 2086501, at \*5 (B.A.P. 9th Cir. June 8, 2012); *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014) ("Cause' is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive"). The movant bears the burden of establishing by a preponderance of the evidence that cause exists. *In re Sullivan*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014).

Motions to dismiss under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**  
671, 675 (9th Cir. B.A.P. 2006).

**Chapter 11**

"[A] Debtor's request [for voluntary dismissal] should ordinarily be granted unless some 'plain legal prejudice' will result to the creditors." *In re Kimble*, 96 B.R. 305, 308 (Bankr. D. Mont. 1988) (citing *In re Hall*, 15 B.R. 913, 915-16 (B.A.P. 9th Cir. 1981)). "If dismissal will prejudice interested parties, a court may refuse to allow a debtor to dismiss the petition." *In re Sanders*, 417 B.R. 596, 602 (Bankr. D. Ariz. 2009) (citing *In re Leach*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991)). The bankruptcy court has discretion to dismiss or convert a chapter 11 case pursuant to section 1112(b). See *In re Consolidated Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to Chapter 7 is within the bankruptcy court's discretion."); and *In re Silberkraus*, 253 B.R. 890, 903 (Bankr. C.D. Cal. 2000) ("A bankruptcy court has broad discretion to convert or dismiss a chapter 11 petition for 'cause' under 11 U.S.C. § 1112(b).").

Here, there is cause to dismiss the Debtors' cases. There does not appear to be any purpose served by the Debtors remaining in chapter 11. Dismissal is in the best interests of the estate and creditors, because continuing the prosecution of the Debtors' chapter 11 cases will only decrease the pro-rata payments available to administrative claims and conversion of the case will yield no dividend to unsecured creditors.

*B. Bankruptcy Code Priority Scheme*

Allowed claims in bankruptcy cases are paid according to a priority scheme established by the Bankruptcy Code. See 11 U.S.C. § 507. Funds are distributed under six tiers. See 11 U.S.C. § 726(a). In general, where funds are insufficient to pay in full all claims in a single tier, the funds are distributed pro rata. See *id.* at (a)(6). This distribution scheme assumes all secured claims have already been paid. *In re SPM Mfg. Corp.*, 984 F.2d 1305, 1312 (1st Cir. 1993).

The first tier is priority claims. 11 U.S.C. § 726(a). Pursuant to 11 U.S.C. § 507(a), there are ten types of priority claims, which have priority in the following order:

- (2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Capri Coast Capital, Inc.**

**Chapter 11**

programs or facilities authorized under section 13(3) of the Federal Reserve Act ([12 U.S.C. 343](#)), and any fees and charges assessed against the estate under chapter 123 of title 28.

(4) Fourth, allowed unsecured claims, but only to the extent of \$12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual...

Here, the Debtors seek approval of the proposed distribution of the sale proceeds of the estates. The Debtors propose to pay all secured creditors of Amalfi, Ravello, and Capri in full and to pay the allowed administrative claims of each of these estates pro rata with any funds remaining. The contemplated distributions are in conformity with the priority scheme established in the Bankruptcy Code. As such, the Court approves of the proposed distribution scheme.

Creditor opposes dismissal because he alleges that once the State Court Action is resolved, he will file a nondischargeability action which will elevate his claim to priority unsecured. Creditor has cited no law for this proposition. The priority scheme for unsecured claims is found in 11 U.S.C. § 507, which states nothing about a general unsecured claim being elevated to a priority unsecured claim if found to be nondischargeable. Creditor already has a priority unsecured claim to the extent that the State Court Action seeks payment of wages for the six-month period before the Debtors filed bankruptcy. However, Creditor's priority unsecured claim is lower in priority than administrative claims. Further, these are corporate debtors and there will not be a discharge in these cases. Thus, it is unclear what Creditor would accomplish by filing a nondischargeability action against the Debtors.

Finally, the remaining estate funds will not satisfy all secured creditor and administrative claims. The proposed distribution to secured creditors and administrative claims will exhaust all estate funds, such that there will be no distribution to remaining unsecured creditors, whether priority or general. Creditor will not be financially harmed by dismissal of the case before the State Court Action

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Capri Coast Capital, Inc.**

**Chapter 11**

is concluded because he would not receive a distribution from the estates. As such, there is no reason to keep the Debtors in chapter 11 until the State Court Action is concluded.

**III. CONCLUSION**

The Court will dismiss the cases.

The Debtors must submit the order within seven (7) days.

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot  
Amelia Puertas-Samara

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#31.00** Disclosure statement describing chapter 11 plan  
fr. 5/3/18; 6/7/18, 6/14/18 stip; 7/19/18(stip)

Docket 214

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#32.00 Debtor's motion under Rule 9019 for approval of settlement**

Docket 281

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#33.00 Debtor's motion under Rule 9019 for approval of settlement**

Docket 282

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#34.00 Debtor's motion under Rule 9019 for approval of settlement**

Docket 283

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#35.00 Debtor's motion under Rule 9019 for approval of settlement**

Docket 310

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#36.00 Motion in individual ch 11 case for order approving a budget for the use of the debtor's cash and postpetition income

Docket 284

**Tentative Ruling:**

Deny.

Pursuant 11 U.S.C. § 363(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.

(emphasis added). As to the expenses incurred after the appointment of a chapter 11 trustee, the debtor does not have standing to move for relief under 11 U.S.C. § 363(c), which allows *the trustee* to make payments in the ordinary course of business.

As to the portion of the budget that predates the appointment of the chapter 11 trustee, the debtor need not seek approval of the Court for "ordinary course" living expenses:

Rather than struggle to invent out of whole cloth a procedure and standard for approving requests by chapter 11 debtors for authority to spend property of the estate for the payment of post-petition living expenses, the court should give section 363(c)(1) the same interpretation in chapter 11 cases as it has always been understood to have in chapter 13 cases. That is, the court should recognize that section 363(c)(1) authorizes a debtor in possession to use property of the estate to pay post-petition living expenses *without prior court approval*, so long as the amounts to be disbursed qualify as "ordinary course" expenses. An individual chapter 11 debtor needs to pay his

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

living expenses in order to continue generating revenues for the estate. Thus, the payment of ordinary course living expenses should be treated as being within the debtor's ordinary course of business for the purpose of interpreting section 363(c)(1).

*In re Seely*, 492 B.R. 284, 290 (Bankr. C.D. Cal. 2013); *see also In re Villalobos*, 2011 WL 4485793 (B.A.P. 9th Cir. Aug. 19, 2011).

Here, with the exception of the "miscellaneous" line item in the debtor's attached budget, the debtor is moving for approval of a budget that involves "ordinary course" living expenses, such as mortgage, food and utilities. As such, the debtor does not need an order from the Court to make such payments.

If any of these expense are outside the "ordinary course," the debtor should have moved for Court approval *before* making the payments. The debtor is now seeking *nunc pro tunc* approval of these payments. In *Villalobos*, although the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") did not reach the issue of whether *nunc pro tunc* relief was appropriate, the BAP noted that "such retroactive relief is limited and requires specific findings in the Ninth Circuit." *Villalobos*, 2011 WL 4485793 at \*9 n.14 (citing *In re Warren*, 568 F.3d 1113, 1116 n.1 (9th Cir. 2009)). In *Warren*, the Ninth Circuit Court of Appeals stated:

The order issued by the bankruptcy court was designated *nunc pro tunc* to November 15, 2006. "*Nunc pro tunc* signifies now for then, or in other words, a thing is done now, which shall have [the] same legal force and effect as if done at [the] time when it ought to have been done." *United States v. Allen*, 153 F.3d 1037, 1044 (9th Cir.1998). This "inherent power of the court to make its records speak the truth," *id.*, "is a limited one, and may be used only where necessary to correct a clear mistake and prevent injustice." *United States v. Sumner*, 226 F.3d 1005, 1009–10 (9th Cir.2000). The power does not, however, allow the court "to alter the substance of that which actually transpired or to backdate events to serve some other purpose. Rather, its use is limited to making the record reflect what the ... court actually intended to do at an earlier date, but which it did not sufficiently express or did not accomplish due to some error or inadvertence." *Id.* at

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**      **Mehri Akhlaghpour**  
1010 (citations omitted).

**Chapter 11**

*Warren*, 568 F.3d at 1116 n.1. Here, the debtor has not articulated any reason why the Court should provide *nunc pro tunc* relief.

For the reasons set forth above, the Court will deny the debtor's motion for retroactive approval of a budget.

The chapter 11 trustee must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:17-12739 Mehri Akhlaghpour

Chapter 11

#36.10 First Amended Disclosure statement describing first amended chapter 11 plan of reorganization

fr. 7/5/18; 7/19/18; 9/6/18

Docket 262

**\*\*\* VACATED \*\*\* REASON: Withdrawal of amended Disclosure Statement filed 9/13/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#36.20** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17; 5/17/18; 6/7/18; 7/5/18; 7/19/18; 9/6/18(stip)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:18-11342 Victory Entertainment Inc

Chapter 11

#37.00 Chapter 11 Trustees Motion to Convert Case to Chapter 7

Docket 76

**Tentative Ruling:**

Grant.

**I. BACKGROUND**

On May 25, 2018, Victory Entertainment, Inc. ("Debtor") filed a voluntary chapter 11 petition. On May 29, 2018, one business day after Debtor filed its chapter 11 petition, Debtor was scheduled to appear for trial in a state court action entitled *Salazar vs. VIP Showgirls, aka Victory Entertainment, Inc.* (the "Class Action"). Declaration of Howard M. Ehrenberg ("Ehrenberg Declaration"), ¶ 4. The Class Action involves 1,305 plaintiffs who constitute the largest group of creditors of Debtor's estate (collectively, the "Class Action Plaintiffs"). Ehrenberg Declaration, ¶ 5.

On June 5, 2018, the U.S. Trustee (the "UST") filed a motion to dismiss or convert this case (the "UST Motion") [doc. 15]. In the UST Motion, the UST noted that Debtor had not provided: (A) a declaration regarding Debtor's compliance with the UST's guidelines; (B) sufficient evidence of closing all prepetition bank accounts; (C) sufficient evidence of opening and maintaining a debtor-in-possession account; (D) proof of appropriate worker's compensation insurance coverage; (E) a projected cash flow statement for the first 90 days of operation; (F) a statement of major issues and timetable report; and (G) prepetition financial statements.

On June 6, 2018, Debtor filed its schedules [doc. 20] and Statement of Financial Affairs ("SOFA") [doc. 21]. In its schedule A/B, Debtor listed \$5,000 in cash on hand, \$14,756 in a checking account and \$25 in a tax account. Debtor also included a total of \$2,000 in security deposits. Under Part 7 of schedule A/B, Debtor listed 120 chairs, 14 sofas, a safe, 55 lap dance booths, two computers, disc jockey equipment and a money counting machine, with a total value of \$60,000. In its schedule D, Debtor indicated it does not have any secured creditors. In its schedule E/F, Debtor listed \$289,154 in unsecured debt, which did not include an estimated amount of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Victory Entertainment Inc**

**Chapter 11**

debt potentially owed to the Class Action Plaintiffs. As to those listed claims, Debtor stated that the claims would be "6 to 7 figure[s]."

On June 18, 2018, Debtor filed a monthly operating report ("MOR") for the period between May 25, 2018 (the petition date) and May 31, 2018 [doc. 30]. The MOR reflected \$14,756.99 in receipts during this period and \$1,924.81 in disbursements. Debtor has not filed any other MORs since filing the May 2018 MOR.

On June 20, 2018, Debtor filed an initial status report (the "Initial Status Report") [doc. 31], attaching a declaration by Arshavir Khachikian, Debtor's principal (the "Khachikian Declaration"). In the Khachikian Declaration, Mr. Khachikian stated that the primary assets of Debtor are Debtor's goodwill (which Debtor did not estimate) and the \$60,000 in furniture, fixtures and sound equipment. Khachikian Declaration, ¶ 2. In the status report, Debtor indicated that it had not made any postpetition transfers to insiders. Initial Status Report, p. 3.

On June 21, 2018, the next day, the Class Action Plaintiffs filed an objection to the Notice re Insider Compensation (the "Compensation Notice") apparently lodged with the UST (the "Compensation Objection") [doc. 32]. In the Compensation Objection, the Class Action Plaintiffs objected to Debtor's proposed compensation to its principal and requested a hearing on the Compensation Objection. To date, Debtor did not set its request for insider compensation for hearing or otherwise sought approval by the Court to make payments to Debtor's insiders.

On June 29, 2018, the UST filed a supplement to the UST Motion [doc. 38], noting that: (A) Debtor did not have worker's compensation insurance covering the dancers; (B) Debtor only issued Form 1099s to dancers if they asked for one; (C) Debtor did not fill out any government forms for the dancers; and (D) although Debtor has contact information, including addresses, for 1,300 to 1,700 current and former dancers in Debtor's computer system, Debtor did not provide notice to any of the dancers except the Class Action Plaintiffs. The UST requested appointment of a chapter 11 trustee. On the same day, Debtor filed an opposition to the UST Motion [doc. 39], stating that Debtor was unable to obtain worker's compensation insurance for the dancers because it classified the dancers as independent contractors.

The Class Action Plaintiffs filed a joinder to the UST Motion (the "Joinder") [doc. 40]

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Victory Entertainment Inc**

**Chapter 11**

and requested the appointment of a chapter 11 trustee. The Class Action Plaintiffs attached a prepetition decision by the state court certifying the Class Action Plaintiffs as a class (the "Certification Decision"). Declaration of Jeffrey M. Cohon, ¶ 6, Exhibit D. As part of its Certification Decision, the state court held that the Class Action Plaintiffs met the definition of employee under California law. *Id.*

On July 5, 2018, the Court held a hearing on the UST Motion. On the same day, the Court entered an order directing the appointment of a chapter 11 trustee [doc. 44]. On July 10, 2018, the UST filed a notice of appointing Howard M. Ehrenberg as the chapter 11 trustee (the "Trustee") [doc. 50]. On July 12, 2018, the Court approved the appointment of the Trustee [doc. 53].

On July 13, 2018, the UST, the Trustee, the Class Action Plaintiffs and Debtor entered into the *Stipulation Regarding Trustee's Oversight, Management and Limited Related Duties Pending Execution of Class Action Settlement Agreement and Dismissal of Chapter 11 Bankruptcy Case* (the "Oversight Stipulation") [doc. 54]. Through the Oversight Stipulation, the parties noted that they had reached an agreement to settle the Class Action and that the settlement provided for a conditional dismissal of Debtor's bankruptcy case and the appointment of an oversight receiver in the pending state court Class Action until final consummation of the settlement agreement. In anticipation of the settlement agreement, the parties agreed that the Trustee would have limited oversight over Debtor's business until the parties finalized their settlement agreement and the Trustee filed a motion for conditional dismissal of this case. On July 16, 2018, the Court entered an order approving the Oversight Stipulation [doc. 58].

On August 29, 2018, the Trustee filed the Motion [doc. 76]. In the Motion, the Trustee noted that Debtor was no longer willing to proceed with the settlement agreement. Ehrenberg Declaration, ¶ 9. The Trustee also stated that, as of August 29, 2018, the Trustee shut down Debtor's business because it remained out of compliance with applicable law. Ehrenberg Declaration, ¶¶ 11-14. At this time, the Trustee believes that the goodwill of Debtor's business is the only asset with the potential to have any significant value. Ehrenberg Declaration, ¶ 14.

On September 6, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 93]. In the Opposition, Debtor states that it is actively attempting to obtain

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Victory Entertainment Inc**

**Chapter 11**

worker's compensation insurance and to renew its general liability insurance. Debtor also notes that it has renewed its efforts to settle with the Class Action Plaintiffs. Debtor argues that if this case is converted to a chapter 7 case, Debtor will not be able to generate income from operating its business and will not be able to pay what it owes under any settlement agreement. In addition, Debtor notes that Debtor's liquidation value is minimal.

**II. ANALYSIS**

Pursuant to 11 U.S.C. § 1112(b)—

- (1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.
- (4) For purposes of this subsection, the term 'cause' includes...
  - (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
  - (B) gross mismanagement of the estate;
  - (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
  - ...
  - (E) failure to comply with an order of the court;
  - (F) 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;

Motions to dismiss or convert under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

---

2:00 PM

CONT... **Victory Entertainment Inc**

**Chapter 11**

of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006). The bankruptcy court has discretion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. §1112(b). *See In re Consolidated Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to Chapter 7 is within the bankruptcy court's discretion."); *and In re Silberkraus*, 253 B.R. 890, 903 (Bankr. C.D. Cal. 2000) ("A bankruptcy court has broad discretion to convert or dismiss a chapter 11 petition for 'cause' under 11 U.S.C. § 1112(b).").

Here, there is cause to dismiss or convert the case. First, despite a finding by the state court that Debtor's dancers should be considered employees instead of independent contractors, Debtor has not obtained worker's compensation insurance, in contravention of applicable law. Moreover, Debtor has not filed any MORs since the May 2018 MOR. As such, there is cause to dismiss or convert this case.

As to whether conversion or dismissal is appropriate, the Trustee requests conversion. The Trustee notes that there is potential value in Debtor's goodwill. In addition, Debtor's schedules list \$60,000 in furniture and equipment, which may potentially be sold to satisfy creditors. Further, the UST's guidelines for chapter 11 debtors provide that, if an objection to insider compensation is filed, as it was here, debtors "shall refrain from paying any portion of the disputed compensation or increase until the objection has been resolved." Guidelines and Requirements for Chapter 11 Debtors in Possession, Section IV.B.5. To the extent Debtor compensated insiders without this Court's approval, a chapter 7 trustee may be entitled to recover such compensation for the benefit of the estate.

Although Debtor generated post-petition income as an operating business, Debtor's business is now shut down for lack of compliance with the law. As such, dismissal of this case without liquidation will not necessarily provide for any recovery to creditors of Debtor's estate. Through a chapter 7 liquidation, the Trustee may be able to market Debtor's goodwill, to sell certain assets of Debtor and/or to recover unauthorized post-petition transfers for the benefit of the estate, in accordance with 11 U.S.C. §§ 549 and 550. As such, conversion to a chapter 7 case is in the best interest of creditors, and the Court will grant the Motion.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Victory Entertainment Inc**

**Chapter 11**

**III. CONCLUSION**

The Court will grant the Motion and convert this case to a chapter 7 case.

The Trustee must submit an order within seven (7) days.

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

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#38.00** Order to show cause why this case should not be dismissed for failure to operate in accordance with State Law

fr. 8/30/18

Docket 73

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 20, 2018

Hearing Room 301

2:00 PM

1:18-11342 Victory Entertainment Inc

Chapter 11

#38.10 Motion in Individual Ch 11 Case for Order Employing Professional  
George J. Paukert as General Bankruptcy Counsel

Docket 42

**Tentative Ruling:**

The Court will approve the application to approve the employment of George J. Paukert as general bankruptcy counsel to the debtor in possession [doc. 42]. In connection with any fee application filed by Mr. Paukert (which is a prerequisite to Mr. Paukert obtaining entitlement to payment for any postpetition services to the estate), the Court will scrutinize Mr. Paukert's requested fees and costs in accordance with 11 U.S.C. § 330.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under section 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including - (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . . ." 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case," the court shall not allow compensation for - (i) unnecessary duplication of services; or (ii) services that were not - (I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Mr. Paukert must submit an order within seven (7) days.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Victory Entertainment Inc**

**Chapter 11**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 20, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11342 Victory Entertainment Inc**

**Chapter 11**

**#39.00** Status conference re chapter 11 case

fr. 7/5/18; 7/26/18, 8/9/18; 8/23/18; 8/30/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 26, 2018**

**Hearing Room 301**

9:30 AM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#1.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17; 1/24/18; 6/26/18

Docket 1

**Tentative Ruling:**

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Plaintiff's Evidentiary Objections to the Declaration of Noor Norris

P. 1, lines 26-28 and P. 2, lines 1-4: overruled

P. 2, lines 5-6: overruled

P.2, lines 12-16: overruled

P. 2, lines 17-22: overruled

P. 2, lines 23-25: overruled

P. 2, lines 26-28 and P. 3, line 1: overruled

P. 3, lines 2-7: overruled

P. 3, lines 8-11: sustained

P. 3, lines 12-17: overruled

P. 3, lines 18-24: overruled

P. 3, lines 25-28 and P. 4, lines 1-2: overruled

Plaintiff's Evidentiary Objections to the Declaration of Mahvash Goharizi

P. 1, lines 27-28 and P. 2, lines 1-3: sustained as to "WECT has little to no value without Noor Norris going to Afghanistan to obtain contracts for WECT. The company is virtually valueless."

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, September 26, 2018**

**Hearing Room 301**

9:30 AM

**CONT... NOOR NORRIS**

**Chapter 7**

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, September 27, 2018

Hearing Room 301

9:30 AM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#1.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris

fr. 6/7/17; 11/15/17; 1/24/18; 6/26/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing continued to the 3:00 PM Calendar.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 27, 2018**

**Hearing Room 301**

---

2:00 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#2.00** Motion for Authority to Use Cash Collateral

fr. 8/28/18

Docket 7

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mr. Tortilla, Inc.

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

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 27, 2018**

**Hearing Room 301**

3:00 PM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#3.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris  
[For Ruling]

fr. 6/7/17; 11/15/17; 1/24/18; 6/26/18

Docket 1

**Tentative Ruling:**

The Court will post a written ruling, with its findings of fact and conclusions of law, by 2:30 p.m. on October 24, 2018.

Appearances on September 27, 2018 are excused.

**Party Information**

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, September 27, 2018**

**Hearing Room 301**

---

3:00 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

Jessica L Bagdanov  
Reed Bernet  
Brad S Sures



United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:16-10096 Alexander Eshaghian

Chapter 13

#1.00 Motion for relief from stay [AN]

MICHELE BIDINGER  
VS  
DEBTOR

fr. 9/12/18;

Docket 78

\*\*\* VACATED \*\*\* REASON: Order entered 9/27/18.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Party Information**

**Debtor(s):**

Alexander Eshaghian

Represented By  
Richard T Baum

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#2.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

fr. 8/22/18; 9/5/18

**Stip for adequate protection fld 9/27/2018**

Docket 101

\*\*\* VACATED \*\*\* REASON: Stip for adequate protection entered on  
9/28/2018

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

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

**Debtor(s):**

Carmit Benbaruh

Represented By

Leslie Richards - SUSPENDED BK -

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:15-13626 Dwayne Rice Corbitt**

**Chapter 13**

**#3.00** Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 9/12/18;

Docket 103

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Tentative Ruling from 9/12/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Dwayne Rice Corbitt**

**Chapter 13**

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:16-13190 JeanPaul Reneaux**

**Chapter 13**

**#4.00** Motion for relief from stay [RP]

WELLS FARGO BANK N.A.  
VS  
DEBTOR

fr. 8/22/18(stip)

Docket 56

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

JeanPaul Reneaux

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:17-12317 Yuliy Mosk

Chapter 13

#5.00 Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING LLC  
VS  
DEBTOR

fr. 8/15/18; 9/5/18

**Stip filed 10/1/18**

Docket 56

\*\*\* VACATED \*\*\* REASON: Adequate protection order entered 10/1/18

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Party Information**

**Debtor(s):**

Yuliy Mosk

Represented By  
Alla Tenina

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:18-10211 Haysun Chang

Chapter 13

#6.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.  
VS  
DEBTOR

fr. 9/5/18

Docket 34

\*\*\* VACATED \*\*\* REASON: Adequate protection order entered on  
September 21, 2018

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Haysun Chang

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11936 Jose Luis Gonzalez**

**Chapter 13**

**#7.00** Emergency motion to enforce the automatic stay

fr. 8/1/18; 9/5/2018;

Docket 11

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

In the Court's prior ruling on September 5, 2018, the Court ordered the debtor to file a declaration by September 26, 2018, signed under penalty of perjury demonstrating that he made his August and September 2018 chapter 13 plan payments and his August and September 2018 deed of trust payments regarding his residence. As of October 1, 2018, the debtor has not filed a declaration stating he has made his chapter 13 payments or deed of trust payments.

It appears that the debtor is eligible for a discharge. Would the debtor like to convert the case to a chapter 7? Absent conversion of the case to chapter 7, the Court will deny the motion, and the automatic stay will terminate.

The Court will prepare the order.

**Ruling from 9/5/18**

The Court will grant the motion on an interim basis, through October 3, 2018, and continue the hearing to **9:30 a.m. on October 3, 2018.**

This is the debtor's fourth chapter 13 case. The debtor's schedule I indicates that he and his spouse make a combined income of \$15,000.00 per month. However, the debtor's statement of financial affairs does not support this assertion. The debtor's chapter 13 plan is based on an income of \$15,000.00 per month. On or before September 26, 2018, the debtor must file a declaration signed under penalty of perjury demonstrating that he has made his August and September 2018 chapter 13 plan payments and his August and September 2018 deed of trust payments regarding his



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jose Luis Gonzalez**  
residence.

**Chapter 13**

Is the debtor interested in participating in the Court's loan modification program?

**Ruling from 8/1/18**

Grant on an interim basis, until the next hearing. The Court intends to continue this hearing to **September 5, 2018 at 9:30 a.m.**

Under 11 U.S.C. § 362(c)(4), in order to impose the automatic stay in a case filed within one year of two or more cases of the debtor that were pending but were dismissed, the debtor must show that the pending case was filed in good faith as to the creditors to be stayed.

***The First Case.*** On August 31, 2017, Jose Luis Gonzalez (the "Debtor") filed a chapter 13 petition, commencing case no. 1:17-bk-12312-MT (the "First Case"). In the First Case, the Debtor was represented by counsel. On August 31, 2017, the Court issued a *Notice of Dismissal of Case if Required Documents Are Not Filed or Signed* ("Dismissal Notice") [1:17-bk-12312-MT, doc. 3]. The Dismissal Notice provided that the First Case would be dismissed if the Debtor did not comply within 72 hours. On September 6, 2017, the Court entered an order dismissing the First Case [1:17-bk-12312-MT, doc. 10].

***The Second Case.*** On January 3, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10017-VK (the "Second Case"). In the Second Case, the Debtor was represented by counsel. On January 4, 2018, the Court entered an *Order to Comply with Bankruptcy Rule 1007 and 3015(B) and Notice of Intent to Dismiss Case* (the "Order to Comply") [1:18-bk-10017-VK, doc. 7]. The Order to Comply directed the Debtor to file his chapter 13 plan no later than 14 days after the petition date. No chapter 13 plan was filed. On January 22, 2018, the Court entered an order dismissing the Second Case [1:18-bk-10017-VK, doc. 12].

***The Third Case.*** On January 29, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-10251-MT (the "Third Case"). In the Third Case, the Debtor was represented by counsel. On March 28, 2018, the Court entered an order dismissing the Third Case, for failure to appear at the 341(a) meeting and/or to make

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

CONT... **Jose Luis Gonzalez**

**Chapter 13**

pre-confirmation plan payments [1:18-bk-10251-MT, doc. 29].

*The Pending Case.* On July 31, 2018, the Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-11936-VK (the "Pending Case"). On August 1, 2018, the Debtor filed an *Emergency Motion to Enforce the Automatic Stay* (the "Motion") [doc. 11]. Through the Motion, the Debtor seeks to impose the automatic stay in his case as to all secured creditors, with respect to his single family residence located at 22051 Sagebrook Drive, Chatsworth, CA 91311 (the "Property").

The Debtor states that on August 2, 2017, he submitted a loan modification application to Bank of America. Bank of America subsequently informed the Debtor that the loan modification process had been transferred to Carrington Mortgage Services, LLC ("Carrington"). Then the Debtor was informed that he had to re-start the loan modification process, directly with Carrington. On December 12, 2017, the Debtor submitted a loan modification application to Carrington. The Debtor alleges that Carrington improperly denied his loan modification application.

The Debtor represents that the attorneys who assisted him with his prior bankruptcy cases are responsible for the dismissal of those cases, because of their inadequate assistance. The Debtor further represents that he can confirm a 100% payment plan and has adequate income to cover the ongoing mortgage payments plus payment of arrears over 5 years.

In light of the foregoing, the Court will grant the Motion on an interim basis and impose the automatic stay on all secured creditors up to the date of the continued hearing. **No later than August 8, 2018**, the Debtor must also file and serve notice of the continued hearing, and serve the Motion, on *all* secured creditors. The notice of continued hearing must state that the deadline to file an opposition to the Motion is **August 22, 2018**. The deadline to file a reply is **August 29, 2018**. If the Debtor does not appear at the continued hearing on September 5, 2018, the Court may deny the Motion and lift the automatic stay.

**Party Information**

**Debtor(s):**

Jose Luis Gonzalez

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Jose Luis Gonzalez**

Hovig J Abassian

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11471 Atif Sheikh and Naureen Sheikh**

**Chapter 7**

**#8.00** Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST  
VS  
DEBTOR

Docket 39

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Atif Sheikh

Represented By  
Steven M Gluck

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Atif Sheikh and Naureen Sheikh**

**Chapter 7**

**Joint Debtor(s):**

Naureen Sheikh

Represented By  
Steven M Gluck

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11490 Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**#9.00** Motion for relief from stay [PP]  
(2013 Ford Transit Connect Van)

FORD MOTOR CREDIT COMPANY, LLC  
VS  
DEBTOR

Docket 15

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Silver Age None-Emergency

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Silver Age None-Emergency Medical Transportation,  
David S Hagen**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11490 Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**#10.00** Motion for relief from stay [PP]  
(2013 Ford CMXFHE)

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 16

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Silver Age None-Emergency

Represented By  
David S Hagen



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Silver Age None-Emergency Medical Transportation,  
Trustee(s):**

**Chapter 7**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11490 Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**#11.00** Motion for relief from stay [PP]  
(2014 Ford CMXFHE)

FORD MOTOR CREDIT COMPANY, LLC  
VS  
DEBTOR

Docket 17

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Silver Age None-Emergency

Represented By  
David S Hagen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Silver Age None-Emergency Medical Transportation,  
Trustee(s):**

**Chapter 7**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11490 Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**#12.00** Motion for relief from stay [PP]  
(2014 Ford CMXFHE - 1FADP5AU1EL521431)

FORD MOTOR CREDIT COMPANY, LLC  
VS  
DEBTOR

Docket 18

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Silver Age None-Emergency

Represented By  
David S Hagen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Silver Age None-Emergency Medical Transportation,**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11809 Louiza Stephany Akopyan**

**Chapter 7**

**#13.00** Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST  
VS  
DEBTOR

Docket 9

**\*\*\* VACATED \*\*\* REASON: For service time continued to 10/17/18**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Louiza Stephany Akopyan

Represented By  
Navid Kohan

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11827 Vartan Grigoryan**

**Chapter 7**

**#14.00** Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

Docket 12

**\*\*\* VACATED \*\*\* REASON: For service time continued to 10/17/18**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Vartan Grigoryan

Represented By  
Anita Khachikyan

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11841 Lupe Perez**

**Chapter 7**

**#15.00** Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION  
VS  
DEBTOR

Docket 9

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Lupe Perez

Represented By  
Sydell B Connor



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Lupe Perez**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:18-11850 Krikor Semerjian and Nora Ayvazian

Chapter 7

#16.00 Motion for relief from stay [PP]

EH NATIONAL BANK  
VS  
DEBTOR

**Stipulation filed 9/21/18.**

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
9/25/18.**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Krikor Semerjian

Represented By  
Tamar Terzian

**Joint Debtor(s):**

Nora Ayvazian

Represented By  
Tamar Terzian

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11488 Christopher Anderson**

**Chapter 7**

**#17.00 Amended motion for relief from stay [RP]**

301  
VS  
DEBTOR

Docket 41

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Christopher Anderson**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:18-12120 Raymond Smith

Chapter 13

#18.00 Motion for relief from stay [UD]

PLB MANAGEMENT, LLC, A CA LTD.LIAB. CO.  
VS  
DEBTOR

**Case dismissed 9/10/2018**

Docket 9

\*\*\* VACATED \*\*\* REASON: Case dismissed on 9/10/18. Motion is moot.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Raymond Smith

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12147 Eun Joo Kwack**

**Chapter 13**

**#19.00** Motion for relief from stay [UD]

SOOK PARK AND DAE KEUN PARK REVOCABLE TRUST  
VS  
DEBTOR

**Case dismissed 9/10/2018**

Docket 10

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

On September 10, 2018, this case was dismissed. Grant relief from stay pursuant to § 362(d)(1).

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180-days, so that no further automatic stay will arise in that case as to the property at issue.

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Eun Joo Kwack**

**Chapter 13**

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

**Debtor(s):**

Eun Joo Kwack

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

9:30 AM

1:17-10083 Javier Magana and Jacqueline E. Magana

Chapter 13

#20.00 Motion for relief from stay [RP]

WELLS FARGO BANK NA  
VS  
DEBTOR

**Stip filed 9/28/18**

Docket 69

**\*\*\* VACATED \*\*\* REASON: Adequate protection order entered  
9/28/2018**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Javier Magana

Represented By  
Andrew Moher

**Joint Debtor(s):**

Jacqueline E. Magana

Represented By  
Andrew Moher

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10796 Eloy Medina, Jr.**

**Chapter 13**

**#21.00** Motion for relief from stay [RP]

US BANK NA  
VS  
DEBTOR

Docket 54

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Eloy Medina Jr.

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Eloy Medina, Jr.**

Joshua L Sternberg

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11444 Orlando Huete**

**Chapter 13**

**#22.00** Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 20

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Orlando Huete

Represented By  
Jaime A Cuevas

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11524 Jose Luis Chavez**

**Chapter 13**

**#23.00** Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

**Case dismissed 8/6/2018**

Docket 31

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

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 upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Jose Luis Chavez**

**Chapter 13**

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 180 days from the hearing on this motion upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

The order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording of a copy of this Order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Jose Luis Chavez

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11987 Samuel Maurice Morrison**

**Chapter 13**

**#24.00** Motion for relief from stay [RP]

WELLS FARGO BANK NA  
VS  
DEBTOR

**Case dismissed 8/27/2018**

Docket 10

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Samuel Maurice Morrison**

**Chapter 13**

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

**Debtor(s):**

Samuel Maurice Morrison

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12280 Stacy Reynolds**

**Chapter 13**

**#24.10** Motion for relief from stay [RP]

DEBTOR  
VS  
WILLIAM BIGELSON

Docket 7

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Unless an appearance is made at the hearing on October 3, 2018, the hearing is continued to October 17, 2018 at 9:30 a.m.**

**On or before October 5, 2018**, movant must file and serve the motion, notice of the continued hearing, and notice of the deadline to file any response on the original borrower on the deed of trust at issue, Michael Kewley, as required by Local Bankruptcy Rule 4001-1(c)(B). The deadline to file a response must indicate that any response must be served and filed one (1) court day prior to the date of the continued hearing.

Appearances on October 3, 2018 are excused.

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

**Debtor(s):**

Stacy Reynolds Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR) Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, October 3, 2018

Hearing Room 303

9:30 AM

1:18-11342 Victory Entertainment Inc

Chapter 11

#25.00 Motion for relief from stay [RP]

HALA ENTERPRISES, LLC  
VS  
DEBTOR

Docket 84

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 303**

---

9:30 AM

**CONT... Victory Entertainment Inc**

**Chapter 11**

Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

1:30 PM

**1:12-16951 Walter James Burns**

**Chapter 13**

Adv#: 1:17-01109 Burns v. Education Credit Management Corporation et al

**#26.00** Pretrial conference re complaint to determine dischargeability of student loans

from: 2/14/18; 6/13/18(stip); 8/15/18(stip)

Docket 3

**\*\*\* VACATED \*\*\* REASON: Judgment order entered 9/4/18**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Defendant(s):**

Education Credit Management

Pro Se

PHEAA

Pro Se

United States Department of

Pro Se

**Plaintiff(s):**

Walter James Burns

Represented By  
Vahe Khojayan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

1:30 PM

**1:17-11358 Thomas Jang Young Yoon**

**Chapter 7**

Adv#: 1:17-01093 Zamora v. Yoon

**#27.00** Status conference re: complaint  
(1) to Avoid and Recover Fraudulent Transfers;  
(2) to Preserve Recovered Transfers for Benefit of Debtor's Estate  
(3) Disallowance of any Claims Held by Defendant [11 U.S.C. § 502(d)] [11 U.S.C. § 544 and Missouri Revised Statutes § 428 et. seq., 11 U.S.C. § 550 and 551 and 11 U.S.C. § 502(d)] - Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

fr. 1/24/18(stip); 2/21/18(stip); 5/2/18 (stip); 5/2/18(stip); 6/6/18(stip); 7/18/18(stip); 8/1/18(stip); 9/5/18(stip)

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 3/15/19.

Deadline to complete one day of mediation: 3/29/19.

Deadline to file pretrial motions: 4/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**      **Thomas Jang Young Yoon**  
Bankruptcy Rule 7016-1: 5/1/19.

**Chapter 7**

Pretrial: 1:30 p.m. on 5/15/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Thomas Jang Young Yoon

Represented By  
Stella A Havkin

**Defendant(s):**

Mary Rose Yoon

Pro Se

**Plaintiff(s):**

Nancy H Zamora

Represented By  
Anthony A Friedman

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Anthony A Friedman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

1:30 PM

**1:17-12365 Irina Feldman**

**Chapter 7**

Adv#: 1:17-01104 Fahmy v. Feldman

- #28.00** Pretrial conference re: complaint for non-dischargeability for
1. Debts incurred through false pretenses, false representation or actual fraud under 11 U.S.C. sec 523(a)(2)(A)
  2. Debts incurred through false statements respecting debtor's financial condition under 11 U.S.C. sec 523(a)(2)(B)
  3. Debts incurred for fraud or defalcation while acting in fiduciary capacity, embezzlement, or larceny under 11 U.S.C. sec 523 (a)(4)
  4. Debts incurred through willful and malicious injury to property under 11 U.S.C. sec 523(a)(6)
  5. Debts for a fine, penalty, etc. under 11 U.S.C. sec 523(a)(7)

**Stipulated Judgment filed 9/18/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulated judgment entered 9/19/18.**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Irina Feldman

Represented By  
Link W Schrader

**Defendant(s):**

Irina Feldman

Pro Se

**Plaintiff(s):**

Ahmad Fahmy

Represented By  
Daren M Schlecter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Irina Feldman**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10162 JBC Staples, LLC**

**Chapter 11**

Adv#: 1:18-01080 Wells Fargo Bank, National Association, as Trustee v. JBC Staples, LLC and

- #29.00** Status conference re complaint for:  
(1) conversion  
(2) unjust enrichment  
(3) account stated  
(4) imposition of constructive trust pursuant to  
CAL.CIV. Code §§2223 & 2224

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order of dismissal entered 9/13/18**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JBC Staples, LLC

Represented By  
Illyssa I Fogel

**Defendant(s):**

JBC Staples, LLC and Illyssa I Fogel

Pro Se

**Plaintiff(s):**

Wells Fargo Bank, National

Represented By  
Keith C Owens



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10468 Patrick Abrahamian**

**Chapter 7**

Adv#: 1:18-01063 Cotton v. Abrahamian

**#30.00** Status conference re complaint to determine the non-dischargeability of debts under 11U.S.C. §523(a)(6)

fr. 7/18/18

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on December 5, 2018.**

It appears that the plaintiff has not requested entry of default under Local Bankruptcy Rule 7055-1(a). The plaintiff must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **November 1, 2018.**

If the plaintiff will be seeking to recover attorneys' fees, the plaintiff must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

The plaintiff's appearance on October 3, 2018 is excused.

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

**Debtor(s):**

Patrick Abrahamian

Represented By  
Leo Fasen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Patrick Abrahamian**

**Chapter 7**

**Defendant(s):**

Patrick Abrahamian

Pro Se

**Plaintiff(s):**

Thomas Christian Cotton

Represented By  
Andrew R Delaflor

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11150 Robert Edward Zuckerman**  
Adv#: 1:18-01081 Albini et al v. Zuckerman

**Chapter 11**

**#31.00** Status conference re complaint to determine nondischargeability of debt pursuant to 11 U.S.C. §523(a)(2)(A)

Docket 1

**\*\*\* VACATED \*\*\* REASON: continued to 10/17/18 at 1:30 p.m. per stip filed on 9/17/18**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Pro Se

**Plaintiff(s):**

Ronald Lapham

Represented By  
Edward McCutchan

Vito Lovero

Represented By  
Edward McCutchan

Frederick Mann

Represented By  
Edward McCutchan

Katherine Mann

Represented By  
Edward McCutchan

Jim Nord (Mein Trust)

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Evelina Dale Peritore	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Gary Ricioli	Represented By Edward McCutchan
Leon Sanders	Represented By Edward McCutchan
Mary Lou Schmidt	Represented By Edward McCutchan
Mark Schulte	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Richard Seversen	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
We Care Animal Rescue	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Nansi Weil Represented By  
Edward McCutchan

Lillian Lapham Represented By  
Edward McCutchan

Edward Keane Represented By  
Edward McCutchan

Gary Holbrook Represented By  
Edward McCutchan

Vern Fung Represented By  
Edward McCutchan

Edward P Albini Represented By  
Edward McCutchan

Dolores Abel Represented By  
Edward McCutchan

Carl (Eugene) Barnes Represented By  
Edward McCutchan

Patricia Barnes Represented By  
Edward McCutchan

Dale Barnes Represented By  
Edward McCutchan

Ken Bowerman Represented By  
Edward McCutchan

Chris Bowerman Represented By  
Edward McCutchan

Eileen Boyle Represented By  
Edward McCutchan

Henry P Crigler Represented By  
Edward McCutchan

Matthew Zdanek Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Henry Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Erhard York Trustee	Represented By Edward McCutchan
Louise Escher York	Represented By Edward McCutchan
Graham Gettemy	Represented By Edward McCutchan
Robert P Gilman	Represented By Edward McCutchan
John Hightower	Represented By Edward McCutchan
Bill Hing	Represented By Edward McCutchan
K Owyong Crigler	Represented By Edward McCutchan
Jim Nord (Patrick Family Trust)	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #32.00** Status conference re: complaint for:  
(1) declaratory and injunctive relief re: determination of validity, priority or extend of interest in property;  
(2) declaratory and injunctive relief re: determination of validity, priority or extend to lien;  
(3) turnover of property of the estate pursuant to 11 U.S.C. sec 542;  
(4) nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A), 11 U.S.C. sec 523(a)(2)(B). 11 U.S.C. sec 523 (a)(6)  
[28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

Docket 1

**\*\*\* VACATED \*\*\* REASON: Another summons issued 8/22/18. Status hearing set for 10/17/2018 at 1:30 p.m.**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Zuckerman Building Company, a	Pro Se
Contiental San Jacinto, LLC, a	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

San Jacinto Z, LLC, a California Pro Se

Rezinate San Jacinto, LLC, a Pro Se

Maravilla Center, LLC, a California Pro Se

Sunderland/McCutchan, Inc., a Pro Se

Nicki B Allen, an individual Pro Se

DOES 1-20 Pro Se

**Plaintiff(s):**

Richard Abel Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087      Liebling and June Liebling individually and on beh v. Goodrich et al

**#33.00**      Creditor's Motion to strike debtor's notice of removal and/or remand

fr. 9/12/18

Docket      8

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

See calendar no. 34.

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

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Peter Scarpias aka Peter Scarpias	Pro Se
Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Mark Rudiger	Represented By Edward McCutchan
Elizabeth Ross on behalf of Betty P	Represented By Edward McCutchan
Cathy Ripple	Represented By Edward McCutchan
Dennis Ripple	Represented By Edward McCutchan
Gary Ricioili	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Charlie Ray Moore	Represented By Edward McCutchan
Evelina Peritore	Represented By Edward McCutchan
Scott Page	Represented By Edward McCutchan
Nord Kerry L. Nord, individually	Represented By Edward McCutchan
Carey James	Represented By Edward McCutchan
Mireille M Moore	Represented By Edward McCutchan
John Milliken on behalf of We Care	Represented By Edward McCutchan
Jack Miller and Virginia Miller	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Dorothy Sanders	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan
Troy Winslow and Robin Winslow	Represented By Edward McCutchan
Mark D Shulte individually and on	Represented By Edward McCutchan
Henry T Crigler and Kathleen	Represented By Edward McCutchan
Francine Deering	Represented By Edward McCutchan
Gregge Vernon	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Louise Escher York, individually	Represented By Edward McCutchan
Amy Marshall	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Marvin Taylor	Represented By Edward McCutchan
Jerry Strickler and Linda M.	Represented By Edward McCutchan
Ryan Strickler	Represented By Edward McCutchan
Donald Stewart	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Sandy Smith and Edward L. Smith	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Richard Seversen individually and	Represented By Edward McCutchan
Beverly J. Taylor	Represented By Edward McCutchan
Patricia L Marshall	Represented By Edward McCutchan
Steve Harvey	Represented By Edward McCutchan
Fredric I Mann and Katherine Mann	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Henry T Crigler on behalf of the	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

James T Deering  
Represented By  
Edward McCutchan

Dennis Cordellos  
Represented By  
Edward McCutchan

John Cleary and Kathleen J. Cleary  
Represented By  
Edward McCutchan

Eileen Boyle individually and on  
Represented By  
Edward McCutchan

Ken Bowerman and Christine  
Represented By  
Edward McCutchan

Gene Barnes  
Represented By  
Edward McCutchan

Dale Barnes and Caroline Barnes  
Represented By  
Edward McCutchan

Patricia Barnes  
Represented By  
Edward McCutchan

Carl Barnes  
Represented By  
Edward McCutchan

Randy Bailey  
Represented By  
Edward McCutchan

Jackie Ann Albini  
Represented By  
Edward McCutchan

Edward P Albini  
Represented By  
Edward McCutchan

Dolores Abel individually and on  
Represented By  
Edward McCutchan

Richard Abel  
Represented By  
Edward McCutchan

Hyam Liebling and June Liebling  
Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Gary Dezorzi and Judith Dezorzi	Represented By Edward McCutchan
Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Graham H Gettemy individually and	Represented By Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Vernon Larson	Represented By Edward McCutchan
Ronald P Lapham and Rosemary E.	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Peter Kerston	Represented By Edward McCutchan
Glen Lane	Represented By Edward McCutchan
Pamela Lane	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Thomas B Marshall	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Bill Ong Hing and Lenora Verne

Represented By  
Edward McCutchan

John Hightower and Polly Ann

Represented By  
Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

---

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01087 Liebling and June Liebling individually and on beh v. Goodrich et al

#34.00 Status Conference and Order to Show cause re remand

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

In light of the joint status report filed by the parties [doc. 25], in which the parties indicate their willingness to participate in the Court's mediation program, the Court will defer ruling on remand in order for the parties to be able to engage in mediation for a reasonable period of time before the Court determines the issue of remand.

Alternatively, if the parties would like to discuss the possibility of a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Albini et al v. Zuckerman* [1:18-ap-01081-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK], the Court will continue this status conference to **1:30 p.m. on November 14, 2018.**

If the parties in this adversary proceeding will commence mediation regarding *solely* this action (with the Court assessing that such a decision is well-founded), within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/21/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

**Debtor(s):**

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
-------------------------	---

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se
Peter Skarpas aka Peter Scarpas	Pro Se
Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By Edward McCutchan
Mark Rudiger	Represented By Edward McCutchan
Elizabeth Ross on behalf of Betty P	Represented By Edward McCutchan
Cathy Ripple	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Dennis Ripple	Represented By Edward McCutchan
Gary Ricioili	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Charlie Ray Moore	Represented By Edward McCutchan
Evelina Peritore	Represented By Edward McCutchan
Scott Page	Represented By Edward McCutchan
Nord Kerry L. Nord, individually	Represented By Edward McCutchan
Carey James	Represented By Edward McCutchan
Mireille M Moore	Represented By Edward McCutchan
John Milliken on behalf of We Care	Represented By Edward McCutchan
Jack Miller and Virginia Miller	Represented By Edward McCutchan
Dorothy Sanders	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan
Troy Winslow and Robin Winslow	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Mark D Shulte individually and on	Represented By Edward McCutchan
Henry T Crigler and Kathleen	Represented By Edward McCutchan
Francine Deering	Represented By Edward McCutchan
Gregge Vernon	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Louise Escher York, individually	Represented By Edward McCutchan
Amy Marshall	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By Edward McCutchan
Marvin Taylor	Represented By Edward McCutchan
Jerry Strickler and Linda M.	Represented By Edward McCutchan
Ryan Strickler	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Donald Stewart Represented By  
Edward McCutchan

Walter Spiridonoff Represented By  
Edward McCutchan

Sandy Smith and Edward L. Smith Represented By  
Edward McCutchan

Lindy Sinclair Represented By  
Edward McCutchan

Richard Seversen individually and Represented By  
Edward McCutchan

Beverly J. Taylor Represented By  
Edward McCutchan

Patricia L Marshall Represented By  
Edward McCutchan

Steve Harvey Represented By  
Edward McCutchan

Fredric I Mann and Katherine Mann Represented By  
Edward McCutchan

Dale Davis Represented By  
Edward McCutchan

Henry T Crigler on behalf of the Represented By  
Edward McCutchan

James T Deering Represented By  
Edward McCutchan

Dennis Cordellos Represented By  
Edward McCutchan

John Cleary and Kathleen J. Cleary Represented By  
Edward McCutchan

Eileen Boyle individually and on Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Ken Bowerman and Christine	Represented By Edward McCutchan
Gene Barnes	Represented By Edward McCutchan
Dale Barnes and Caroline Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Carl Barnes	Represented By Edward McCutchan
Randy Bailey	Represented By Edward McCutchan
Jackie Ann Albini	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel individually and on	Represented By Edward McCutchan
Richard Abel	Represented By Edward McCutchan
Hyam Liebling and June Liebling	Represented By Edward McCutchan
Gary Dezorzi and Judith Dezorzi	Represented By Edward McCutchan
Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Graham H Gettamy individually and      Represented By  
Edward McCutchan

Vito Lovero      Represented By  
Edward McCutchan

Vernon Larson      Represented By  
Edward McCutchan

Ronald P Lapham and Rosemary E.      Represented By  
Edward McCutchan

Lillian Lapham      Represented By  
Edward McCutchan

Peter Kerston      Represented By  
Edward McCutchan

Glen Lane      Represented By  
Edward McCutchan

Pamela Lane      Represented By  
Edward McCutchan

Edward Keane      Represented By  
Edward McCutchan

Thomas B Marshall      Represented By  
Edward McCutchan

Gary Holbrook      Represented By  
Edward McCutchan

Bill Ong Hing and Lenora Verne      Represented By  
Edward McCutchan

John Hightower and Polly Ann      Represented By  
Edward McCutchan

Kerry L Nord individually and on      Represented By  
Edward McCutchan

Michael Gubernik      Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#35.00** Defendant's motion for award of attorney's fees

Docket 300

**\*\*\* VACATED \*\*\* REASON: Notice rescheduling hearing filed 3/13/18.  
Hearing rescheduled for 11/14/18 at 2:30 PM**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

**1:16-12214 Mahshid Loghmani**

**Chapter 7**

Adv#: 1:16-01150 Tessie Cleveland Community Services Corp. v. Loghmani et al

- #36.00** Trial re first amended complaint to
- 1) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(4)-(5)
  - 2) deny debtor's discharge pursuant to 11 U.S.C. 727(A)(2)-(3)
  - 3) determine the dischargeability of debts pursuant to 523(a)(2)(A) and (6)
  - 4) determine the dischargeability of debts pursuant to 523(a)(10)

[RE: Issue of Joint Petition]

fr. 2/14/18; 2/21/18; 4/11/18; 6/6/18; 8/27/18

Docket 1

**Judge:**

The Court will enter judgment in favor of Mahshid Loghmani and Mohsen Loghmani ("Defendants"). The Court also will sever the joint petition filed by Defendants.

**I. BACKGROUND**

*A. Defendants' Background*

On August 1, 2016, Defendants filed a voluntary chapter 7 petition, initiating their current bankruptcy case [1:16-bk-12214-VK]. In their joint petition, Defendants indicated that they are married.

Mr. Loghmani is a licensed general contractor and engineer. Joint Pretrial Stipulation ("JPS") [doc. 57], 1:8-9. Ms. Loghmani also is a licensed contractor. JPS, 1:9-10. Defendants operate under the dba L.A. Design Group ("L.A. Design"), and Ms. Loghmani also operates under the dba May Design & Construction ("May Design"). JPS, 1:10-11.

In 1975, Defendants married in Iran. [FN1]. In 1981, Defendants divorced while they were living in Chicago, Illinois. According to Ms. Loghmani, Defendants remained divorced for a total of three to four weeks, after which time Defendants resumed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

living together. Upon reuniting, Defendants considered themselves married despite their divorce having been finalized and despite the fact Defendants never remarried. JPS, 1:12-13. Presently, Defendants continue to assert they qualify as a legally married couple. According to Ms. Loghmani, Defendants believe they are married because, although they divorced in the United States, they did not also initiate divorce proceedings in Iran. In addition, Defendants continued to file joint tax returns and refer to themselves as a married couple in all of their legal documents, including banking records, grant deeds and mortgage documents.

***B. Plaintiff's State Court Actions against Defendants***

Tessie Cleveland Community Services Corp. ("Plaintiff") hired Mr. Loghmani as a general contractor and engineer to remodel some of Plaintiff's corporate facilities. Ruling on Plaintiff's Motion for Summary Judgment ("MSJ Ruling") [doc. 47], p. 1. On October 26, 2009, Plaintiff filed a state court action against Mr. Loghmani entitled *Tessie Cleveland Community Services Corp. v. Mohsen Loghmani*, Los Angeles Superior Court, Case No. TC023541 (the "Breach of Contract Action"). JPS, 1:14-16. In the Breach of Contract Action, Plaintiff alleged claims including negligence, four counts of breach of contract and intentional misrepresentation in connection with Mr. Loghmani's remodeling services. MSJ Ruling, p. 1.

On December 28, 2011, the jury in the Breach of Contract Action returned a verdict in favor of Plaintiff. Plaintiff's Exhibit 3. In light of this verdict, on March 7, 2013, the state court entered judgment in favor of Plaintiff (the "Breach of Contract Judgment"). *Id.* In the Breach of Contract Judgment, the state court awarded Plaintiff a total of \$484,495.45 and awarded Mr. Loghmani a total of \$96,169.98, which the state court offset against the amount awarded to Plaintiff for a net award to Plaintiff in the amount of \$388,325.47. *Id.* The state court also awarded Plaintiff \$1,458,101.25 in attorneys' fees and \$22,963.15 in costs for a total judgment against Mr. Loghmani in the amount of \$1,869,389.87. *Id.*

On October 28, 2011, Plaintiff filed a fraudulent transfer action against Defendants entitled *Tessie Cleveland Community Services Corp. v. Loghmani, et al.*, Los Angeles Superior Court, Case No. EC05714 (the "Fraudulent Transfer Action"). MSJ Ruling, p. 3. Through the Fraudulent Transfer Action, Plaintiff alleged that Mr. Loghmani fraudulently transferred property, including the real property located at 8212 Laurel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Canyon Boulevard, North Hollywood, California 91605 (the "Laurel Canyon Property"), to Ms. Loghmani. *Id.*

In connection with the Fraudulent Transfer Action, Defendants argued that the Laurel Canyon Property could not be legally classified as "community property" because Defendants had been divorced since 1981. Plaintiff's Exhibit 6. On February 25, 2015, the state court entered a fraudulent transfer judgment against Defendants (the "Fraudulent Transfer Judgment"). Plaintiff's Exhibit 4. In the Fraudulent Transfer Judgment, the state court found that the Laurel Canyon Property was subject to attachment and execution to satisfy the Breach of Contract Judgment. *Id.* The state court also set aside the transfer of the Laurel Canyon Property from Mr. Loghmani to Ms. Loghmani. *Id.* In addition, the state court held that the Fraudulent Transfer Judgment would serve as a lien against the Laurel Canyon Property. *Id.*

On May 22, 2015, the state court awarded Plaintiff an additional \$65,332.50 in attorneys' fees and, on July 25, 2015, another \$23,507.50 in attorneys' fees. Plaintiff's Exhibit 3. The state court amended the Breach of Contract Judgment to reflect a total of \$1,958,229.87 awarded to Plaintiff. *Id.*

On May 2, 2016, the state court entered an order for the sale of the Laurel Canyon Property (the "Sale Order"). Plaintiff's Exhibit 5. In the Sale Order, the state court valued the Laurel Canyon Property at \$532,500. *Id.* The valuation in the Sale Order appears to be based on an appraisal dated March 22, 2016. Plaintiff's Exhibit 37.

***C. M L Engineering & Construction, Inc.***

On February 24, 2012, in response to being sued by Plaintiff, Mr. Loghmani filed Articles of Incorporation with the Secretary of State of the State of California (the "Secretary of State") to create a corporate entity named M L Engineering & Construction, Inc. ("M L Engineering"). Plaintiff's Exhibit 20. On May 25, 2012, Mr. Loghmani filed a Statement of Information with the Secretary of State, indicating that Mr. Loghmani was the Chief Executive Officer, Secretary and Chief Financial Officer of M L Engineering. Plaintiff's Exhibit 21. The following year, on April 12, 2013, Mr. Loghmani filed another Statement of Information on behalf of M L Engineering. Plaintiff's Exhibit 22. According to Mr. Loghmani, Defendants' son prepared both Statements of Information using LegalZoom.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Mr. Loghmani formed M L Engineering after Plaintiff sued Mr. Loghmani to better protect himself from litigation. However, according to Mr. Loghmani, M L Engineering never conducted any business. Despite the preparation of the two Statements of Information from 2012 and 2013, Mr. Loghmani asserted that not a single project went through M L Engineering and that the entity was "dead" soon after it was created in February 2012.

***D. Mr. Loghmani's Prior Bankruptcy Case***

On March 29, 2012, Mr. Loghmani filed a voluntary chapter 7 petition (the "Prior Case") [1:12-bk-12998-VK]. In Mr. Loghmani's schedules and statements filed in the Prior Case [1:12-bk-12998-VK, doc. 11], Mr. Loghmani indicated he was married and referred to Ms. Loghmani as his wife, such as by listing property as his "wife's" property or referring to assets or liabilities as community property or debts. In an amended schedule F [1:12-bk-12998-VK, doc. 75], Mr. Loghmani scheduled two debts in favor of Plaintiff totaling \$1,846,426.72.

In Mr. Loghmani's Statement of Financial Affairs ("SOFA") filed in the Prior Case, Mr. Loghmani listed three state court lawsuits to which Mr. Loghmani was a party within one year preceding the Prior Case: (A) the Breach of Contract Action; (B) the Fraudulent Transfer Action; and (C) a quiet title action bearing case number NC054045.

On November 30, 2012, the U.S. Trustee filed a complaint against Mr. Loghmani requesting denial of Mr. Loghmani's discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and (a)(4)(A) (the "UST Action") [1:12-ap-01419-VK]. The UST Action was based on Mr. Loghmani's failure to disclose a prepetition transfer of real property in San Bernardino from Mr. Loghmani to Mr. Loghmani's son. On December 3, 2013, the Court held trial on the UST Action. On January 7, 2014, the Court entered a judgment denying Mr. Loghmani his discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and (a)(4)(A) (the "Denial of Discharge Judgment") [1:12-ap-01419-VK, doc. 47]. [FN2].

On December 9, 2013, after the Court held trial on the UST Action, Mr. Loghmani filed a motion to dismiss the Prior Case (the "Motion to Dismiss") [1:12-bk-12998-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

VK, doc. 79]. On January 29, 2014, after a hearing, the Court denied the Motion to Dismiss [1:12-bk-12998-VK, doc. 86]. On August 3, 2016, Mr. Loghmani's bankruptcy case closed without discharge. The docket entry related to the closing of Mr. Loghmani's case notes that Mr. Loghmani "has not filed a Certification About a Financial Management Course proving compliance with the required instructional course requirement for discharge."

***E. Defendants' State Court Actions against Plaintiff***

On September 24, 2014, Mr. Loghmani filed a complaint against Plaintiff, among others, asserting a violation of the federal and California False Claims Act (the "Qui Tam Action"). Plaintiff's Exhibit 9. The Qui Tam Action was filed under seal. *Id.* On December 26, 2016, after Defendants filed their chapter 7 petition, the district court presiding over the Qui Tam Action entered an order unsealing certain documents filed in the Qui Tam Action. Plaintiff's Exhibit 10.

On May 19, 2017, Defendants filed another complaint against the County of Los Angeles and Plaintiff, among others, asserting claims for waste of public funds and requesting permanent injunctive relief (the "County Action"). Plaintiff's Exhibit 12. Although Defendants filed the County Action on May 19, 2017, emails between Mr. Loghmani and agents of Plaintiff indicate that Defendants contemplated filing the County Action as early as January 27, 2016. Plaintiff's Exhibit 30.

Through the County Action, Defendants requested an order "enjoining the continued unlawful and wasteful expenditure of tax dollars on [Plaintiff's] contract with the Department of Mental Health, County of Los Angeles, and declare their contract void and require [Plaintiff] to reimburse the [County of Los Angeles] all funds illegally obtained by defrauding the [County of Los Angeles]." Plaintiff's Exhibit 12. Defendants did not request monetary damages for themselves. *Id.*

***F. Defendants' Current Petition and the Original Schedules***

Following Defendants' filing of their joint chapter 7 petition, on August 3, 2016, the Court sent notice of Defendants' bankruptcy filing to several creditors, including the Franchise Tax Board (the "FTB") [Bankruptcy Docket, doc. 6].

On August 24, 2016, Defendants filed their original schedules and statements

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

[Bankruptcy Docket, doc. 14]. At the time, Defendants represented themselves *in pro per*. In their Statement of Related Cases, which calls for prior petitions filed by debtors, Defendants did not list the Prior Case. In their schedule A/B, Defendants listed the Laurel Canyon Property and valued it at \$365,000. Defendants indicated that only Ms. Loghmani had an interest in the Laurel Canyon Property. In their schedule A/B, Defendants also listed a professional engineer's license and Ms. Loghmani's contractor's license. Defendants did not schedule Mr. Loghmani's contractor's license. Defendants also listed an interest in two lawsuits, which Defendants referenced by case number alone. Defendants did not include the Qui Tam Action. At this time, Defendants had not yet initiated the County Action.

In their schedule D, Defendants listed a first priority deed of trust in favor of Seterus Inc. ("Seterus") in the amount of \$163,116.47. Defendants indicated that only Ms. Loghmani is liable on the mortgage. Defendants also listed a judgment lien in favor of Plaintiff in the amount of \$315,891.75. As to the judgment lien, Defendants indicated that both Defendants were liable for the claim in favor of Plaintiff. In their schedule E/F, Defendants listed a claim in favor of Mahtab Azghadi, Ms. Loghmani's sister, in the amount of \$65,000. Defendants indicated that Ms. Azghadi's claim is entitled to priority treatment. Aside from Seterus, Plaintiff and Ms. Azghadi, Defendants did not list any other creditors in their schedules.

In their SOFA, Defendants again indicated they are married. Under Part 4 of the SOFA, which requests information about lawsuits in which debtors are parties, Defendants listed two state court actions: a malicious prosecution, fraud and conversion action and a fraudulent misrepresentation and concealment action. Below these responses, Defendants handwrote "plus few more," but did not specify the additional lawsuits to which they were parties. Under Part 11 of their SOFA, which calls for debtors to list businesses they owned within four years prior to the petition date, Defendants listed two businesses: L.A. Design and May Design. Defendants did not list M L Engineering.

***G. Defendants' Amended Schedules***

On June 21, 2017, Defendants filed amended schedules and statements [Bankruptcy Docket, doc. 33]. This time, Defendants were represented by counsel. In their amended schedule A/B, Defendants again listed the Laurel Canyon Property and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

valued it at \$365,000. Once again, Defendants indicated that only Ms. Loghmani had an interest in the Laurel Canyon Property. Defendants also listed their interest in the professional engineer's license, Ms. Loghmani's contractor's license and the two lawsuits referenced by case number. Defendants did not schedule Mr. Loghmani's contractor's license. This time, Defendants added an attachment to their amended schedule A/B and included information about the Qui Tam Action. Although Defendants had initiated the County Action by this time, Defendants did not include the County Action in their amended schedules or statements.

In their amended schedule D, Defendants once again listed the mortgage in favor of Seterus. This time, Defendants stated that both Defendants were liable on the mortgage. Defendants also listed the judgment lien in favor of Plaintiff in the amount of \$315,891.75 and again noted that both Defendants were liable to Plaintiff. This time, Defendants also listed another judgment lien in favor of Plaintiff in the amount of \$1,869,389.87 and stated that both Defendants were liable on the claim. In their amended schedule E/F, Defendants listed the \$65,000 claim in favor of Ms. Azghadi. Defendants continued to assert that the claim is entitled to priority treatment. This time, Defendants added an unsecured claim in favor of Plaintiff in the amount of \$1,869,389.87.

In their amended SOFA, Defendants again represented that they are married. Under Part 4 of the amended SOFA, Defendants listed the Malicious Prosecution Action and the Fraud Action. This time, Defendants also included the Qui Tam Action. Under Part 11 of the amended SOFA, Defendants again listed L.A. Design and May Design, but did not include M L Engineering.

***H. Other Relevant Events from Defendants' Bankruptcy Case***

On October 7, 2016, Defendants attended a § 341(a) meeting of creditors (the "Meeting of Creditors"). JPS, 2:26. At the Meeting of Creditors, Defendants testified that: (A) they read and signed their petition, schedules and statements; (B) they were personally familiar with the information in their petition, schedules and statements; (C) with the exception of U.S. Bank, all creditors were listed in Defendants' schedules and statements; (D) all assets were identified in Defendants' schedules and statements; (E) except for the omission of U.S. Bank, the information in the petition, schedules and statements were true and correct; and (G) Defendants have been

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

married since 1975. JPS, 2:26-3:5. Mr. Loghmani also testified that the Prior Case was dismissed. JPS, 3:5-6.

On December 6, 2017, after Defendants filed their amended schedules and statements, the FTB filed a proof of claim in the amount of \$20,798.51. On August 8, 2018, the FTB filed an amended proof of claim, asserting a claim in the same amount. In both the original and the amended proofs of claim, the FTB stated that Defendants had not filed their tax returns for the years 2013, 2014 and 2015. As such, for purposes of the proofs of claim, the FTB included a hypothetical amount subject to amendment once Defendants filed their tax returns.

On August 16, 2017, Seterus filed a motion for relief from the automatic stay (the "RFS Motion") [Bankruptcy Docket, doc. 36], requesting authority to foreclose on the Laurel Canyon Property. On September 25, 2017, the Court entered an order granting the RFS Motion (the "RFS Order") [Bankruptcy Docket, doc. 42].

On December 19, 2017, the chapter 7 trustee (the "Trustee") filed an application to employ general counsel (the "Employment Application") [Bankruptcy Docket, doc. 47]. On January 22, 2018, the Court entered an order approving the Employment Application (the "Employment Order") [Bankruptcy Docket, doc. 54].

On February 14, 2018, the Trustee filed a motion to approve the sale of the Qui Tam Action, the County Action and a malicious prosecution action (collectively, the "Lawsuits") to Plaintiff for \$75,000 [Bankruptcy Docket, doc. 56]. On March 26, 2018, the Court entered an order approving the sale of the Lawsuits (the "Sale of Lawsuits Order") [Bankruptcy Docket, doc. 68].

On August 6, 2018, the Trustee filed an application to employ accountants (the "Accountant Application") [Bankruptcy Docket, doc. 73]. Through the Accountant Application, the Trustee seeks to retain accountants to help the Trustee complete tax work and financial analyses prior to administration of Defendants' estate. On September 27, 2018, the Court entered an order approving the Accountant Application (the "Accountant Order") [Bankruptcy Docket, doc. 78].

***I. The Adversary Proceeding***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

On November 1, 2016, Plaintiff filed a complaint against Defendants, initiating this adversary proceeding. Plaintiff requested nondischargeability of the debt owed to it pursuant to 11 U.S.C. § 523(a)(6) and (a)(10) and denial of Defendants' discharge pursuant to 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5). On October 27, 2017, Plaintiff filed a first amended complaint [doc. 30], adding a claim under 11 U.S.C. § 523(a)(2)(A).

On November 17, 2017, Plaintiff filed a motion for summary judgment (the "MSJ") [doc. 33]. Through the MSJ, Plaintiff requested summary judgment on its claims under 11 U.S.C. § 523. On February 21, 2018, the Court held a hearing on the MSJ and issued the MSJ Ruling [doc. 47]. In the MSJ Ruling, the Court held that judgment would be entered against Mr. Loghmani, but not Ms. Loghmani, as to one of Plaintiff's claims under 11 U.S.C. § 523(a)(2)(A) and as to Plaintiff's claim under 11 U.S.C. § 523(a)(10). Regarding Plaintiff's claim under § 523(a)(10), the Court held that all debts owed to Plaintiff arising from Plaintiff's prepetition state court actions against Mr. Loghmani would be nondischargeable because of the Denial of Discharge Judgment. The Court denied the remainder of the MSJ. On April 16, 2018, the Court entered an order granting in part and denying in part the MSJ [doc. 52].

On May 23, 2018, the parties entered into a joint pretrial stipulation (the "JPS") [doc. 57]. In the JPS, the parties agreed that the Court would try Plaintiff's claims under 11 U.S.C. § 727(a)(2), (a)(3) and (a)(4)(A). On June 18, 2018, the Court entered an order setting dates and deadlines for trial [doc. 58]. On August 6, 2018, the Court entered an order approving the JPS [doc. 71].

On August 27, 2018, the Court held trial on Plaintiff's claims. At trial, Plaintiff asserted the Court should deny Defendants' discharge based on the following inaccuracies and omissions:

- (A) Defendants indicated they are married in their petition, schedules and statements;
- (B) Defendants indicated in their schedules that only Ms. Loghmani had an interest in the Laurel Canyon Property despite the state court finding that both Defendants had an interest in the Laurel Canyon Property;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

- (C) Defendants scheduled the Laurel Canyon Property as being worth \$365,000 when the state court found that the fair market value of the Laurel Canyon Property was \$532,500;
- (D) Defendants did not include M L Engineering in their schedules;
- (E) Defendants did not list Mr. Loghmani's contractor's license in their schedules;
- (F) Defendants did not list loans made by Ms. Loghmani to Mr. Loghmani;
- (G) Defendants did not list the Qui Tam Action in their original schedules;
- (H) Defendants did not schedule the County Action in either their original or amended schedules;
- (I) Defendants did not list the correct amount owed to Plaintiff in their schedules;
- (J) Defendants scheduled Ms. Azghadi's claim as a priority claim and did not provide documents evidencing the loan;
- (K) Defendants did not disclose the Prior Case;
- (L) Defendants omitted other unsecured creditors from Defendants' schedule E/F, including the FTB; and
- (M) Defendants falsely indicated that the Prior Case was dismissed at the Meeting of Creditors.

In response, Defendants testified as follows:

- (A) Defendants believe they are married because they never dissolved their Iranian marriage, they have held themselves out as married for decades and have filed taxes and other legal documents as a married couple;
- (B) Defendants believe Ms. Loghmani is the only debtor with an interest in the Laurel Canyon Property because she purchased the Laurel Canyon Property

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

using her parents' money, and Mr. Loghmani signed a document confirming he does not have an interest in the Laurel Canyon Property;

- (C) Defendants believed the Laurel Canyon Property was worth \$365,000 when they filed their bankruptcy petition and did not believe they had to list the value prescribed by the state court;
- (D) M L Engineering stopped operating as of February 2012 and did not have any value or business activity;
- (E) Mr. Loghmani's contractor's license was not active as of the petition date;
- (F) Defendants did not believe they had to list any debts owed to each other because they were filing a joint case;
- (G) Defendants did not list the Qui Tam Action in their original schedules because it was filed under seal, but did note in the SOFA that they were involved in a "few more" lawsuits, which Defendants intended as a reference to the Qui Tam Action;
- (H) Defendants did not schedule the County Action because it was an action for declaratory relief and there was no monetary value to the estate;
- (I) Defendants scheduled the debt owed to Plaintiff as \$315,891.75 because Defendants believed they could not get a discharge of the additional amounts by operation of the Denial of Discharge Judgment;
- (J) Ms. Azghadi loaned Defendants money so they could fund litigation against Plaintiff, and Defendants listed the debt as "priority" because they did not understand what "priority" meant;
- (K) Defendants inadvertently forgot to list the Prior Case but did not intend to conceal it and did not believe they could conceal it because the current bankruptcy case and the Prior Case were filed in the same district and division;
- (L) Defendants did not list additional unsecured creditors because they believed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

they could not obtain a discharge of those debts, as a result of the Denial of Discharge Judgment, and did not believe they owed any taxes, including to the FTB; and

(M) Defendants believed the Prior Case was dismissed because Mr. Loghmani did not complete a financial management course.

After trial, the Court raised the issue of Defendants' marital status and asked the parties if Defendants' bankruptcy case is subject to dismissal because Defendants filed a joint petition despite not being legally married. The Court requested post-trial briefing from the parties. On August 31, 2018, Plaintiff filed a supplemental brief [doc. 82], arguing against dismissal and suggesting severance of the Defendants' petition as an alternative. Defendants did not timely file a post-trial brief.

## **II. LEGAL STANDARDS REGARDING DENIAL OF DISCHARGE**

### ***A. Burden of Proof***

In an action under 11 U.S.C. § 727, the objector to discharge bears the burden to prove by a preponderance of the evidence that the debtor's discharge should be denied under an enumerated ground of § 727(a). *In re Khalil*, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

### ***B. 11 U.S.C. § 727(a)(2)***

Section 727(a)(2)(A)-(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT... Mahshid Loghmani

Chapter 7

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor...." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753–54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986) (quoting *Devers*, 759 F.2d at 753–54).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *see also In re Zhang*, 463 B.R. 66, 78 (Bankr. S.D. Ohio 2012).

**C. 11 U.S.C. § 727(a)(4)(A)**

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. To bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010) (quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show that (1) the debtor made the representations;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

(2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*Roberts*, 331 B.R. at 884. Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011).

### III. ANALYSIS REGARDING DISCHARGE OF DEFENDANTS

#### A. 11 U.S.C. § 727(a)(2)

Plaintiff did not meet its burden of proving that Defendants concealed assets with intent to hinder, delay or defraud creditors or officers of the estate. Plaintiff contends that Defendants concealed the following assets: (A) M L Engineering; (B) Mr. Loghmani's contractor's license; (C) the Qui Tam Action; and (D) the County Action.

##### i. *M L Engineering*

Plaintiff contends that Defendants omitted M L Engineering from their schedules and statements with intent to hinder, delay or defraud. However, Mr. Loghmani testified that M L Engineering did not conduct any business since its inception in February 2012. Plaintiff submitted evidence demonstrating that M L Engineering was active as of April 2013, however, with the exception of Mr. Loghmani's testimony that the business was perpetually inactive, the record is devoid of any information about M L Engineering after 2013. As such, Plaintiff has not shown that Defendants concealed property that belonged to Defendants "within one year before the petition date" or property of the estate after the petition date.

Even if M L Engineering was active within the timeframes set forth in 11 U.S.C. § 727(a)(2), Plaintiff did not demonstrate that Defendants omitted the asset with intent



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

to hinder, delay or defraud creditors or officers of the estate. Once again, according to Mr. Loghmani, M L Engineering did not generate any business and did not have any value. Plaintiff did not introduce evidence contradicting this testimony. At trial, Plaintiff suggested that Defendants did not provide evidence demonstrating that M L Engineering was inactive. However, Plaintiff bears the burden of proof, and Plaintiff did not demonstrate that it attempted to obtain any financial records related to M L Engineering, such as through discovery requests. The record did not establish that Defendants' interest in M L Engineering had any value to the estate, and Plaintiff did not meet its burden of showing that Defendants omitted this asset with intent to hinder, delay or defraud.

***ii. Mr. Loghmani's Contractor's License***

According to Mr. Loghmani, Defendants did not list Mr. Loghmani's contractor's license because the license was not active as of the petition date. Plaintiff did not produce contradictory evidence. To the extent the estate had an interest in Mr. Loghmani's inactive license as of the petition date, Plaintiff did not demonstrate that Defendants omitted the license with intent to hinder, delay or defraud.

***iii. The Qui Tam Action***

As to the Qui Tam Action, the estate did have an interest in the pending action as of the petition date. However, Defendants did not entirely conceal the Qui Tam Action. In the SOFA, Defendants wrote "plus few more" below the lawsuits they listed. As such, the Trustee and creditors were put on notice that Defendants were parties to additional lawsuits. Moreover, Defendants explained that the Qui Tam Action was filed under seal, which is why Defendants believed they could not fully disclose details about the Qui Tam Action. After the seal was lifted in the Qui Tam Action, Defendants scheduled the Qui Tam Action in an attachment to their amended schedules. Consequently, the Court finds that Defendants did not omit the Qui Tam Action with intent to hinder, delay or defraud.

***iv. The County Action***

Defendants did not list the County Action in either their original or amended schedules. Under 11 U.S.C. § 541(b)(1), "[p]roperty of the estate does not include... any power that the debtor may exercise solely for the benefit of an entity other than

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

the debtor." Defendants testified, and the evidence showed, that Defendants did not have a monetary interest in the County Action. Through the County Action, Defendants requested only injunctive relief, i.e., terminating the contract between Plaintiff and the County of Los Angeles. Because it appears Defendants did not prosecute the County Action on behalf of themselves, the County Action is not property of the estate, and Defendants were not obligated to list the County Action in their schedules. As such, Defendants did not conceal "property of the estate" for purposes of § 727(a)(2).

***B. 11 U.S.C. § 727(a)(4)(A)***

Plaintiff also has not met its burden of demonstrating that Defendants knowingly and fraudulently made a false oath in connection with their bankruptcy case.

***i. Defendants' Assertion of Marriage***

In their petition, schedules and statements and throughout the course of their bankruptcy case, Defendants have represented that they are married. However, at trial, Defendants testified that they divorced in 1981 and did not remarry. Despite this fact, Defendants believe they are married at this time because they did not dissolve their Iranian marriage and because they have held themselves out as married for decades, including by filing joint tax returns and indicating they are married in other legal documents.

Because Defendants are not legally married, Defendants' repeated representation that they are married constitute a false oath. Moreover, because the status of their marriage impacts administration of their estate, the oath also relates to a material fact.

However, the Court does not believe that Defendants fraudulently made the oaths regarding their marital status. It is true that Defendants represented to the state court that they are divorced to prevent the Laurel Canyon Property from being labeled community property. Defendants may have used questionable tactics in state court to thwart (unsuccessfully) the sale of the Laurel Canyon Property. Nevertheless, Defendants' conduct before the state court is not at issue in this adversary proceeding.

As concerns Defendants' representations before *this* Court, Defendants did not stand

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

to benefit from filing a joint petition as a married couple. Plaintiff, who bears the burden of proof in this action, did not articulate why Defendants would intentionally represent themselves as married to deceive creditors. To the contrary, Defendants' filing of a joint petition would benefit creditors by bringing into the estate *both* Defendants' assets and subjecting both Defendants to investigation by the Trustee, creditors and the Court. The Court finds credible that Defendants believed they qualify as a legally married couple able to file a joint petition; in fact, Mr. Loghmani consistently represented he was married in the Prior Case. As such, even if Defendants' representation regarding marriage was "knowing," the representation was not fraudulent, and Plaintiff's claim under 11 U.S.C. § 727(a)(4) cannot rest on Defendants' oaths regarding their marital status.

*ii. The Laurel Canyon Property*

Plaintiff points to two false oaths or omissions related to the Laurel Canyon Property, namely, that Defendants indicated only Ms. Loghmani has an interest in the Laurel Canyon Property and that Defendants valued the Laurel Canyon Property at \$365,000 instead of using the \$532,500 valuation assigned by the state court.

Regarding Defendants' valuation of the Laurel Canyon Property, Plaintiff did not articulate why Defendants were bound to use the state court's finding of value, which predated the petition date by three months. The state court appears to have based its finding regarding valuation on an appraisal obtained by Plaintiff dated March 22, 2016, over four months before the petition date. Defendants testified that they believed the Laurel Canyon Property was worth \$365,000 as of the petition date. Plaintiff did not dispute this valuation in connection with Defendants' bankruptcy case, and the Trustee has not obtained an independent appraisal in an effort to market the Laurel Canyon Property. As such, the record does not demonstrate that Defendants' valuation as of the petition date constitutes a false oath.

Even if the Laurel Canyon Property was actually worth \$532,500 as of the petition date, Defendants' scheduled value of \$365,000 was not materially false. The Laurel Canyon Property is significantly overencumbered, mostly by the judgment liens in favor of Plaintiff. As such, the likelihood that the Trustee would liquidate the Laurel Canyon Property through the bankruptcy case was minimal. If the Trustee did decide to liquidate the Laurel Canyon Property, the Trustee would not be bound by

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Defendants' assigned valuation; rather, the Trustee's marketing efforts would yield an appropriate purchase price.

Further, Defendants' valuation of the Laurel Canyon Property was not fraudulent. Using Defendants' valuation, Seterus is fully secured. Aside from Seterus, the only creditor with a claim secured by the Laurel Canyon Property is Plaintiff. Plaintiff was well aware of the prepetition valuation of the Laurel Canyon Property. Thus, it does not appear Defendants were attempting to conceal the value of the Laurel Canyon Property.

With respect to the fact that Defendants indicated in both their original and amended schedules that only Ms. Loghmani has an interest in the Laurel Canyon Property, Defendants testified that they continue to believe that the Laurel Canyon Property belongs to Ms. Loghmani alone because she purchased the Laurel Canyon Property with her parents' money and Mr. Loghmani signed a document stating that he does not have an interest in the Laurel Canyon Property. However, because the state court found, through the Fraudulent Transfer Judgment, that the transfer from Mr. Loghmani to Ms. Loghmani would be set aside, it appears both Defendants had an interest in the Laurel Canyon Property as of the petition date. As a result, Defendants' statement in their schedules that only Ms. Loghmani has an interest in the Laurel Canyon Property constitutes a false oath.

However, the false oath is neither material nor fraudulent. In their amended schedules, Defendants indicated that both Defendants are liable on the secured claims in favor of Seterus and Plaintiff. Consequently, even if Defendants listed Ms. Loghmani as the sole owner of the Laurel Canyon Property, Defendants did not attempt to shield the Laurel Canyon Property from either of their secured creditors. Plaintiff did not articulate how Defendants would benefit from, or creditors would be harmed by, a representation that the Laurel Canyon Property belongs to one debtor but labeling each secured debt against the Laurel Canyon Property as a community liability subject to enforcement using the Laurel Canyon Property. Based on the foregoing, Defendants' representations regarding the Laurel Canyon Property do not satisfy the elements of § 727(a)(4)(A).

***iii. M L Engineering***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

Plaintiff also contends Defendants' omission of M L Engineering from their schedules and statements was knowing and fraudulent. According to Mr. Loghmani, however, M L Engineering never conducted any business. The SOFA asks debtors to list businesses they owned, as well as businesses for which debtors acted in a certain capacity, such as officers, directors or managing executives of corporations, within four years of the petition date.

At trial, Mr. Loghmani testified that he did not list M L Engineering because M L Engineering was "dead" as of February 2012. However, the SOFA does not limit the question to active businesses, instead calling for debtors to list *all* businesses within the purview of the question. At least as of April 2013, when Mr. Loghmani's son prepared a Statement of Information to file with the Secretary of State, M L Engineering was still in existence and Mr. Loghmani still retained his multiple roles as Chief Executive Officer, Secretary and Chief Financial Officer. As such, the omission of M L Engineering from the SOFA constitutes a false oath. In addition, because the false oath relates to a possible asset of the estate, the false oath also was material.

However, the Court does not find that the false oath was either knowing or fraudulent. According to Mr. Loghmani, M L Engineering did not generate any income and none of the projects with which Mr. Loghmani was involved went through M L Engineering. Plaintiff did not introduce evidence to the contrary, e.g., financial statements from M L Engineering demonstrating that M L Engineering had any value. Rather than knowingly or fraudulently conceal M L Engineering from the estate, it appears Defendants inadvertently omitted this asset because they did not operate the asset anytime close to the petition date. Thus, Plaintiff has not met its burden of proof as to the omission of M L Engineering.

***iv. Mr. Loghmani's Contractor's Licenses***

The omission of Mr. Loghmani's contractor's license also was not material or fraudulent. Mr. Loghmani testified that his license was inactive as of the petition date. Plaintiff did not demonstrate that inclusion of the license in Defendants' schedules could have led to the discovery of assets, business dealings or the existence and disposition of Defendants' property. Defendants already listed the contracting businesses through which they conducted their business dealings. As such, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

inclusion of Mr. Loghmani's license would have been, at best, a duplicative avenue of discovering the same information that the Trustee and creditors had available by reference to Defendants' scheduled businesses. In light of these facts, the omission was not material, and Defendants did not omit the asset with fraudulent intent.

*v. The Loans between Defendants*

Plaintiff also notes that Defendants did not disclose a loan made by Ms. Loghmani to Mr. Loghmani. To the extent Defendants were obligated to schedule a loan between themselves, the omission was not material. Inclusion of the loan in Defendants' schedules would not have impacted Defendants' joint estate or led to the discovery of additional assets. [FN3]. Plaintiff did not meet its burden of demonstrating why this information was material to the Trustee, creditors or the Court. Plaintiff also did not show why omission of this information was "knowing" or "fraudulent." The Court finds credible that Defendants would believe it was unnecessary to include this loan in their schedules and statements, and Plaintiff has not articulated any discernible benefit to Defendants that would result from omitting this loan from their bankruptcy documents. Consequently, Plaintiff has not met its burden of proof as to the loan.

*vi. The Priority Claim in Favor of Ms. Azghadi*

Plaintiff contends that Defendants falsely scheduled the claim in favor of Ms. Azghadi as priority. Plaintiff also asserts that Defendants did not provide evidence of the loan, such as a promissory note. Although there appears to be no legal basis for classifying Ms. Azghadi's claim as a priority claim, the Court finds that Defendants' designation of the claim was a result of legal confusion, as opposed to a knowing or fraudulent false oath. For instance, Defendants did not attempt to provide inaccurate information about the nature of the claim in an effort to give Ms. Azghadi's claim higher priority. Rather, it appears Defendants simply mislabeled the claim as priority because they did not understand the legal parameters of priority claims.

Moreover, Plaintiff's assertion that Defendants have not provided supporting documentation evidencing the loan is not a basis to deny Defendants their discharge. Plaintiff has the burden of demonstrating that Defendants made a false oath. Plaintiff did not introduce any evidence that would create doubt over the validity of Ms. Azghadi's claim. Plaintiff's conclusory statement that there is no evidence in support

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

of the claim is an attempt at shifting the burden of proof to Defendants. Thus, with respect to the validity of Ms. Azghadi's claim, Plaintiff has not demonstrated that Defendants made a false oath at all.

*vii. The Qui Tam Action*

Defendants did not list the Qui Tam Action by name in their original schedules, but did include the Qui Tam Action in an attachment to their amended schedules. Because Defendants requested monetary damages through the Qui Tam Action, and inclusion of the Qui Tam Action could have led parties to discovery of assets of the estate, the original omission was material.

However, Defendants wrote "plus few more" below the lawsuits they did include in their original SOFA. The inclusion of the phrase "plus few more" would prompt the Trustee or creditors to inquire about the additional lawsuits to which Defendants were parties. Moreover, Mr. Loghmani testified that the Qui Tam Action was filed under seal, and the seal was not lifted until after Defendants filed their original schedules. Because of the seal, Defendants believed they could not disclose details about the Qui Tam Action. As a result, Defendants simply wrote "plus few more" in the SOFA instead of providing complete information about the Qui Tam Action. Because Defendants signaled the existence of additional lawsuits in their original schedules and believed that they could not fully disclose information about the Qui Tam Action, the Court finds that the omission of the Qui Tam Action from Defendants' original schedules was not fraudulent.

*viii. The County Action*

Defendants did not list the County Action in either their original or amended schedules. However, as noted above, the only relief Defendants sought through the County Action was to terminate the contract between Plaintiff and the County of Los Angeles. In addition, Defendants filed the complaint in the County Action long after the petition date. Given that the County Action was initiated *postpetition* and Defendants did not have a personal interest in the County Action, Defendants were not obligated to include the County Action in their schedules or statements, or to amend their schedules or statements following the filing of the County Action, and the omission does not qualify as a false oath.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

For the same reasons, the omission also was not material or fraudulent. Because Defendants sought only injunctive relief through the County Action, the estate did not stand to gain or lose any assets as a result of the litigation; including the County Action in Defendants' schedules or statements, if appropriate, would not lead to the discovery of additional assets beneficial to the estate. Plaintiff also did not articulate how Defendants would benefit from omitting the County Action from their bankruptcy filings. Consequently, even if Defendants had an obligation to list litigation that was commenced postpetition and did not involve Defendants' individual rights, the nondisclosure was neither material nor fraudulent.

***ix. The Prior Case***

In their Statement of Related Cases, Defendants did not include the Prior Case. Because the Statement of Related Cases explicitly calls for debtors to list all prior petitions filed by debtors or their spouses, the omission of the Prior Case constitutes a false oath. Moreover, because the Denial of Discharge Judgment from the Prior Case would impact the extent of Defendants' discharge in this case, the omission also was material.

However, the Court does not find that the omission of the Prior Case was fraudulent. Mr. Loghmani testified that, although he inadvertently omitted the Prior Case from the Statement of Related Cases, he never intended to conceal the Prior Case from creditors or the Court. In fact, Mr. Loghmani stated that he did not believe the Prior Case *could* be concealed given that his current case was filed in the same district and division as the Prior Case. To this point, the Court notes that, other than failing to list the Prior Case in the Statement of Related Cases, Defendants did not actively attempt to conceal the Prior Case. For example, Defendants did not alter their names or Social Security numbers. As a result, the Court's electronic system automatically listed the Prior Case on the docket.

Plaintiff also notes that Mr. Loghmani testified at the Meeting of Creditors that the Prior Case was dismissed. In fact, the Court denied Mr. Loghmani's Motion to Dismiss, and the Prior Case eventually closed upon completion. At trial, Mr. Loghmani stated that he believed the Prior Case was dismissed because Mr. Loghmani did not complete a financial management course. Consistent with Mr. Loghmani's



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

testimony, the case closing docket entry from the Prior Case included a notation stating that Mr. Loghmani had "not filed a Certification About a Financial Management Course proving compliance with the required instructional course requirement for discharge." The Court finds credible Mr. Loghmani's testimony that he read this language as a dismissal for failure to complete a financial management course. Thus, the Court finds that Mr. Loghmani's statement regarding dismissal of the Prior Case was not made knowingly or fraudulently, and Plaintiff has not met its burden under § 727(a)(4)(A).

*x. The Omission of Creditors and the Amount Owed to Plaintiff*

Finally, Plaintiff asserts that Defendants listed the incorrect amount owed to Plaintiff and that Defendants omitted creditors from their schedules, including the FTB, which filed a proof of claim in Defendants' case. Defendants acknowledge that they did not include certain creditors in their schedules and statements. However, at trial, Mr. Loghmani testified that he did not list debts that were included in the Prior Case because he believed that those debts were not subject to discharge because of the Denial of Discharge Judgment. For the same reason, Defendants initially scheduled the debt owed to Plaintiff as \$315,891.75 and subsequently included the additional \$1,869,389.87 in their amended schedules. In Defendants' view, they did not initially list the additional \$1,869,389.87 because that amount, which was included in Mr. Loghmani's schedule F from the Prior Case, could not be discharged through this case.

Moreover, the proof of claim filed by the FTB notes that Defendants did not file their tax returns in 2013, 2014 or 2015. As such, the amount claimed by the FTB is an estimate and does not necessarily reflect the actual amount that will be owed to the FTB once Defendants file their tax returns. At trial, Mr. Loghmani testified that he believes he does not owe any money in taxes to the FTB. Given that Defendants may not owe any money to the FTB once Defendants' tax returns are filed, the record does not establish that Defendants made a false oath by omitting the FTB from their schedules.

In addition, even if Defendants should have included the FTB in their schedules, Plaintiff has not presented any evidence demonstrating that the omission was knowing or fraudulent. The Court sent notice to the FTB of Defendants' bankruptcy filing soon

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

after the petition date; nothing on the record demonstrates that Defendants otherwise attempted to conceal their bankruptcy case from the FTB or to hide any debt they may owe to the FTB from the Trustee, the Court or creditors of the estate. Plaintiff also has not met its burden as to the amount of Plaintiff's claim listed in Defendants' original schedules or as to the omitted creditors.

***C. Plaintiff's Abandoned Claim under 11 U.S.C. § 727(a)(3)***

In the JPS, Plaintiff included 11 U.S.C. § 727(a)(3) as a claim to be adjudicated at trial. At trial, Plaintiff informed the Court that it would not be pursuing its allegations regarding Defendants' alleged failure to preserve business records for L.A. Design. In the JPS, Plaintiff only discussed 11 U.S.C. § 727(a)(3) with respect to L.A. Design. Because Plaintiff elected not to pursue the allegations regarding recordkeeping at L.A. Design, it appears Plaintiff abandoned its claim under 11 U.S.C. § 727(a)(3). In any event, Plaintiff did not present any evidence at trial demonstrating that Defendants failed to adequately preserve business or personal records.

**IV. SEVERING THE JOINT PETITION**

Pursuant to 11 U.S.C. § 302(a), "[a] joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter *and such individual's spouse.*" (emphasis added). "Non-married cohabitants may not file a joint petition pursuant to § 302(a)." *In re Lucero*, 408 B.R. 348, 350 (Bankr. C.D. Cal. 2009). "Courts interpret § 302(a)'s 'individual and individual's spouse' as applicable only to those couples that are legally married." *Id.*

To determine whether joint petitioners are legally married, courts look to state law. *In re Simmons*, 584 B.R. 295, 297–98 (Bankr. N.D. Ill. 2018) ("An individual is in a state of marriage with another person based on the individual's status vis-à-vis the other person under state law."); *and In re Villaverde*, 540 B.R. 431, 434 (Bankr. C.D. Cal. 2015) ("To resolve [the issue regarding whether the joint debtors are legally married], the court must turn to California law to understand the status of domestic partners.").

Pursuant to California Family Code § 300—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Mahshid Loghmani**

**Chapter 7**

- (a) Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division, except as provided by Section 425 and Part 4 (commencing with Section 500).
  
- (b) For purposes of this part, the document issued by the county clerk is a marriage license until it is registered with the county recorder, at which time the license becomes a marriage certificate.

Cal. Fam. Code § 300. Aside from marriages formed under Family Code § 300, California also recognizes the validity of foreign marriages if the marriage is valid under the laws of the jurisdiction in which the marriage arose. Cal. Fam. Code § 308 ("A marriage contracted outside [California] that would be valid by laws of the jurisdiction in which the marriage was contracted is valid in California.").

Here, Defendants testified that they initially married in Iran. There is no evidence on the record demonstrating that Defendants' marriage was valid under the laws of Iran but, even if the marriage was valid under Iranian law, Defendants dissolved their marriage in Illinois. Under Illinois law, the effect of a dissolution of marriage is to give the parties to the divorce the same status as if the parties had never been married. *Parkinson v. Parkinson*, 116 Ill.App. 112, 114 (Ill. App. Ct. 1904) ("The effect of the divorce was to leave the parties, in legal status, the same as if they had never been married."). Defendants have not cited any authority that provides that Defendants also had to dissolve their marriage under Iranian law to finalize their divorce.

According to Defendants, soon after the divorce, Defendants resumed cohabitating together but did not remarry. Defendants imply that they should be treated as married because they held themselves out as married. To the extent Illinois law provides for common law marriages, Defendants' marriage may be deemed valid in California by operation of Cal. Fam. Code § 308. However, pursuant to the Illinois Marriage and Dissolution of Marriage Act, "[c]ommon law marriages contracted in [Illinois] after June 30, 1905 are invalid." 750 Ill. Comp. Stat. Ann. 5/214. California also does not recognize common law marriages. *See People v. Badgett*, 10 Cal.4th 330, 363 (1995);

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

*and Elden v. Sheldon*, 46 Cal.3d 267, 258-59 (1988) (holding that unmarried cohabitants are not treated as spouses under California law).

As such, under both Illinois and California law, Defendants do not qualify as spouses despite having cohabitated or having represented themselves as married. *See also Villaverde*, 540 B.R. at 434-35 (holding that even registered domestic partners did not qualify as "spouses" under California law despite being afforded similar treatment under the law because California law did not explicitly classify domestic partners as spouses). Given that Defendants are not legally married, Defendants also do not qualify as joint petitioners under 11 U.S.C. § 302(a).

Because Defendants improperly filed a joint petition, the Court must decide the best remedy moving forward. Courts deciding the issue have used several approaches, such as providing the option of dismissing one debtor or risking dismissal of the entire case, *Lucero*, 408 B.R. at 350-51, treating only the first listed debtor as having initiated a bankruptcy case, *In re Clem*, 29 B.R. 3 (Bankr. D. Idaho 1982) or dismissing the entire case. *In re Jephunneh Lawrence & Assocs. Chartered*, 63 B.R. 318 (Bankr. D.D.C. 1986). In addition to these options, some courts have provided that severing the joint petition into two separate cases also is an option. *In re Stancil*, 473 B.R. 478, 481 (Bankr. D.D.C. 2012) ("The better view is that a bankruptcy case *is* commenced as to each such [joint filing] entity under 11 U.S.C. § 301, albeit with the entities treated as having improperly joined together in the same petition. Unless the court decides to dismiss the cases, the appropriate remedy to address the improper joinder is to sever the cases."); *In re Gale*, 177 B.R. 531 (Bankr. E.D. Mich. 1995) (providing for severance of improperly joined involuntary petition); and *In re W. Land Bank, Inc.*, 116 B.R. 721, 725 (Bankr. C.D. Cal. 1990) (same); *see also Villaverde*, 540 B.R. at 438 (noting that the options available to the debtors were "dismissing the case in its entirety; severing the joint petition and treating the [d]ebtors as having file[d] two separate cases; or dismissing the joint debtor").

Here, the Court finds that the best approach is to sever Defendants' chapter 7 petition rather than dismiss either of the Defendants from the bankruptcy case. Defendants' bankruptcy case has been pending for over two years. Dismissing the case instead of severing the case would unwind the two years of progress made in Defendants' bankruptcy case. By this time, Seterus has obtained relief from the automatic stay, and the Trustee has employed counsel and sold the Lawsuits to Plaintiff to recover

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**  
\$75,000 for the estate.

**Chapter 7**

Moreover, Defendants, creditors and other parties in interest have relied on the deadlines set in Defendants' bankruptcy case, such as the claims bar date and the deadline by which parties may file nondischargeability or denial of discharge complaints. Severing rather than dismissing the joint petition would preserve those deadlines. In addition, severing the joint petition will not have an effect on the continued operation of the automatic stay.

Based on the above and the fact that Defendants' bankruptcy case has been jointly administered for the past two years, the Court will concurrently order the continued joint administration of Defendants' severed estates. Several courts have suggested that joint administration of estates is appropriate for unmarried debtors with several joint debts and assets. *See In re Stancil*, 473 B.R. 478, 481 (Bankr. D.D.C. 2012) (holding that a joint petition filed by unmarried debtors must be treated as commencing two separate cases and not jointly administered "unless the court later orders such joint administration"); *In re Wilkerson*, 2006 WL 3694638, at \*1 (Bankr. M.D. Ga. 2006) ("The appropriate procedure for non-spouses who have numerous joint debts is to file individual cases and seek administrative consolidation."); *In re Lam*, 98 B.R. 965, 966 (Bankr. W.D. Mo. 1988) (ordering mother-daughter joint petitioners to file two separate cases but providing for administrative consolidation); *In re Malone*, 50 B.R. 2, 3 (Bankr. E.D. Mich. 1985) (offering to entertain a motion for joint administration if the unmarried debtors file two separate chapter 13 petitions); and *In re Cole*, 14 B.R. 5, 6 (Bankr. E.D. Penn. 1981) (holding that the unmarried debtors, who "have incurred joint debts and have obtained joint assets," may not file a joint petition under § 302 but ordering joint administration of their estates).

"Joint administration is... a procedural tool permitting use of a single docket for administrative matters, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of ministerial matters that may aid in expediting the cases.... Used as a matter of convenience and cost saving, it does not create substantive rights." *In re Gianulias*, 2013 WL 1397430, at \*6 (B.A.P. 9th Cir. Apr. 5, 2013) (quoting *In re Reider*, 31 F.3d 1102, 1109 (11th Cir. 1994)). Joint administration also allows for the appointment of one trustee. *See, e.g. Cole*, 14 B.R. at 6.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Mahshid Loghmani**

**Chapter 7**

Joint administration is appropriate in this case. Defendants' case has already been subject to joint administration for two years. Joint administration will ensure that the progress in Defendants' case will be preserved. The RFS Order, the Employment Order, the Sale of Lawsuits Order and the Accountant Order will remain in effect as to both bankruptcy estates. In other words, Seterus will be deemed to have relief from the automatic stay as to both estates; the Trustee's counsel and accountants will be deemed employed as to both estates; and the sale of the Lawsuits to Plaintiff will not be unwound. There will continue to be one chapter 7 trustee tasked with administration of both estates. Given the procedural posture of Defendants' case and pursuant to the Court's inherent authority under 11 U.S.C. § 105(a) and the authorities cited above, the Court finds ordering joint administration of Defendants' estates concurrent with severance of Defendants' joint petition is appropriate. Defendants must file amended, separate schedules and statements in their respective bankruptcy cases upon severance of their joint chapter 7 petition.

#### **V. CONCLUSION**

The Court will enter judgment in favor of Defendants. The Court also will sever Defendants' joint petition and order the joint administration of Defendants' estates.

The Court will prepare the judgment. The Court also will prepare a separate order, to be entered in Defendants' main bankruptcy case, severing the joint petition, setting dates and deadlines by which Defendants must file amended, separate schedules and statements in their respective bankruptcy cases and providing for joint administration of Defendants' estates.

#### **FOOTNOTES**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. Unless this decision references a document from these dockets or an exhibit, the facts are derived from testimony provided at trial. The Court also incorporates its findings from the Ruling on Plaintiff's Motion for Summary Judgment [doc. 47].
2. On July 12, 2012, Plaintiff filed a complaint against Mr. Loghmani requesting nondischargeability of the debt owed to Plaintiff and denial

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Mahshid Loghmani**

**Chapter 7**

of Mr. Loghmani's discharge [1:12-ap-01223-VK]. After entry of the Denial of Discharge Judgment, Plaintiff requested and obtained dismissal of its action.

3. Because the Court will enter an order severing the joint petition and order Defendants to file separate schedules and statements, Defendants should schedule any debts owed to each other in their amended schedules and statements.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Defendant(s):**

Mohsen Loghmani

Pro Se

Mashid Loghmani

Pro Se

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Plaintiff(s):**

Tessie Cleveland Community

Represented By  
Bruce M Cohen  
Michael E Thompson

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#37.00** Motion for sanctions against plaintiff Steven Mark Rosenberg pursuant to FRCP Rule 11 and FRBP Rule 9011; in the form of monetary sanctions in the amount of \$6360.00 against plaintiff and non-monetary sanctions in the striking of the notice of motion and motion to alter or amend judgment

Docket 61

**\*\*\* VACATED \*\*\* REASON: Calendared in error.**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Tomas A Ortiz

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 3, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 3, 2018

Hearing Room 301

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

**#38.00** Plaintiff's motion for summary judgment or, in the alternative, partial summary judgment

Docket 40

**\*\*\* VACATED \*\*\* REASON: Order entered 9/19/18 continuing hearing to 10/17/18 at 2:30 PM**

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 4, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#1.00 Confirmation hearing re First Amended Chapter 11 Plan**

fr. 5/3/18(stip); 6/7/18(stip), 7/19/18(stip) ; 8/16/18

**Stip to continue filed.**

Docket 114

**\*\*\* VACATED \*\*\* REASON: Order entered 10/2/18 continuing hearing to  
11/8/18 at 2:00 PM**

**Tentative Ruling:**

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 4, 2018**

**Hearing Room 301**

1:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#2.00** Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip); 7/19/18(stip); 8/16/18

**Stip to continue filed.**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 10/2/18 continuing hearing to  
11/8/18 at 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 4, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#3.00** Status conference re: chapter 11 case

fr. 4/12/18; 5/10/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on November 1, 2018**. If the debtor has not timely filed a chapter 11 plan and disclosure statement by the extended deadline of October 17, 2018, the debtor must file and serve a status report, **supported by evidence**, no later than **October 18, 2018**, explaining why the debtor did not timely file a proposed chapter 11 plan and disclosure statement and updating the Court on the status of the debtor's case.

Appearances are excused on October 4, 2018.

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

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 4, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11136 Capri Coast Capital, Inc.**

**Chapter 11**

**#3.10** Status conference re chapter 11 case

fr. 6/15/17; 6/22/17; 7/6/17; 8/10/17(stip); 8/24/17 (stip);  
9/14/2017(stip) ; 10/19/17; 12/14/17; 2/8/18; 5/17/18; 6/7/18,  
6/14/18 stip; 7/19/18; 9/20/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Case dismissed on 9/27/2018**

**Tentative Ruling:**

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

**Debtor(s):**

Capri Coast Capital, Inc.

Represented By  
Peter C Bronstein

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, October 4, 2018

Hearing Room 301

2:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#4.00 The United State's Motion to Dismiss

**Stipulation resolving motion filed 9/28/18**

Docket 166

**\*\*\* VACATED \*\*\* REASON: Order entered 10/1/18 approving stipulation resolving motion**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 4, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12354 MidiCi Group, LLC**

**Chapter 11**

- #5.00** Emergency motion for order:  
(1) Authorizing Debtor in Possession to honor pre-petition employee wages, reimbursements, and/or benefits in the ordinary course of business;  
(2) Authorizing Debtor in Possession to honor pre-petition employment procedures including administration and maintenance of employee benefits and programs; and  
(3) Directing banks and financial institutions to honor and process checks and transfers related thereto

Docket 9

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

MidiCi Group, LLC

Represented By  
Douglas M Neistat  
Yi S Kim



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#40.00** Motion for order determining value of collateral  
[11 U.S.C. § 506(a), FRBP 3012]

fr. 9/18/18(stip)

Docket 46

**Tentative Ruling:**

In light of the secured creditor's amended opposition [doc. 64], the parties should be prepared to discuss setting an evidentiary hearing.

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

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Movant(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:12-19663 Melissa Mallare Pontanilla and Joey Patrick Pontanilla**

**Chapter 13**

**#41.00** Trustee's motion to dismiss case due to  
expiration of the plan

fr. 4/10/18; 6/12/18; 8/7/18; 9/18/18

Docket 46

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Melissa Mallare Pontanilla

Represented By  
Ali R Nader

**Joint Debtor(s):**

Joey Patrick Pontanilla

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 3/13/18; 4/10/18; 6/12/18; 8/7/18

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11327 Linda L Johnson**

**Chapter 13**

**#42.10** Trustee's motion to dismiss case for failure to make plan payments

Docket 57

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Linda L Johnson

Represented By  
Thomas B Ure

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11937 Cindy Anne Summers**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 78

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Cindy Anne Summers

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-12897 Mati Timor**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 146

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mati Timor

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14351 Maria Quintana**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 8/7/18

Docket 53

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maria Quintana

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14532 Juan Jose Medrano**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 138

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
9/26/2018**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Juan Jose Medrano

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14567 John Redmond and Kaylyn Redmond**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 74

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

John Redmond

Represented By  
James Geoffrey Beirne

**Joint Debtor(s):**

Kaylyn Redmond

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14688 Yacxiri Karina Leiva Abrego**

**Chapter 13**

**#48.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 126

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Yacxiri Karina Leiva Abrego

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13756 Gerardo Tamariz**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 73

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Gerardo Tamariz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13814 Jennifer Wingert**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 4/10/18; 5/ 8/18; 7/10/18; 8/7/18; 9/18/18

Docket 71

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jennifer Wingert

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13957 Maria G. Luchero**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make  
plan payments

fr. 8/7/2018; 9/18/18

Docket 80

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Maria G. Luchero

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make plan  
fr. 9/18/18

Docket 81

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:16-11712 Alfonso Ruiz Cruz**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 70

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Alfonso Ruiz Cruz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, October 9, 2018

Hearing Room 301

11:00 AM

1:16-12985 Tanya Monge

Chapter 13

#54.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 56

\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
09/25/2018

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Tanya Monge

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:16-13435 Heladio Larios Peralta and Angelina Valencia Peralta**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 50

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Heladio Larios Peralta

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Angelina Valencia Peralta

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10771 John Zaccaro**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 33

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

John Zaccaro

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10796 Eloy Medina, Jr.**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 42

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Eloy Medina Jr.

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11135 Jose Orcia Ramirez**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make  
plan payments  
(Evidentiary Hearing)

fr. 8/7/2018; 9/18/18

Docket 26

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Orcia Ramirez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12522 Taghreed Yaghnam**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 41

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Taghreed Yaghnam

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12748 Mercedes Benitez**

**Chapter 13**

**#60.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 51

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Mercedes Benitez

Represented By  
Matthew D. Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12930 Jose Cabral Aguilera**

**Chapter 13**

**#61.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 42

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Cabral Aguilera

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:17-13103 Steven Joseph Dombrovsky**

**Chapter 13**

**#62.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 53

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
09/25/2018**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Joseph Dombrovsky

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10264 Joe Lopez, Jr.**

**Chapter 13**

**#63.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 29

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Joe Lopez Jr.

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10369 Jaime Gutierrez**

**Chapter 13**

**#64.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 34

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:13-10735 Dawn Elana Gonzales**

**Chapter 13**

**#65.00** Motion objecting to the response of JP Morgan Chase to the Chapter 13 Trustee's notice of final cure payment

fr. 9/18/18(stip)

Docket 122

**Tentative Ruling:**

On July 18, 2018, the chapter 13 trustee filed a notice of final cure payment (the "Notice") [doc. 118], stating that the amount required to cure the default related to the claim filed by JPMorgan Chase Bank, N.A. ("Chase") has been paid in full. On August 8, 2018, Chase filed a response to the Notice (the "Response"). Chase noted that, although the debtor paid the prepetition default amount in full, the debtor was not current on her postpetition obligations to Chase.

On August 29, 2018, the debtor filed an objection to the Response (the "Objection") [doc. 122]. The debtor provided a declaration in support of the Objection, in which the debtor testified that, after an audit, Chase informed the debtor that she was current on her postpetition obligations. The debtor properly served Chase with a copy of the Objection and notice of the hearing on the Objection. In light of the declaration filed by the debtor and the lack of a response to the Objection by Chase, the Court will sustain the Objection.

The debtor must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Dawn Elana Gonzales

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:13-17940 Jordan Mark Wyatt**

**Chapter 13**

**#66.00 Debtor's motion for hardship discharge**

fr. 8/7/18; 9/18/18

Docket 57

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jordan Mark Wyatt

Represented By  
Sundee M Teeple  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Tuesday, October 9, 2018

Hearing Room 301

11:30 AM

1:15-12226 Vassili Moskalenko

Chapter 13

#67.00 Motion for order granting a hardship discharge of debtor's case

Docket 61

\*\*\* VACATED \*\*\* REASON: Noitce of withdrawal of motion filed 9/27/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Vassili Moskalenko

Represented By  
Elena Steers

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, October 9, 2018

Hearing Room 301

11:30 AM

1:14-13105 Teri Lee Spottiswood

Chapter 13

#68.00 Objection of United States Trustee to notice of mortgage payment change filed in connection with proof of claim 3

**Stip filed 9/17/18**

Docket 50

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 9/19/18.  
Hearing continued to 12/11/18 at 11:30 AM.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Teri Lee Spottiswood

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12647 Freddy Benjamin Castro**

**Chapter 13**

**#69.00** Motion to vacate order or, in the alternative, for reconsideration of, orders avoiding lien of Deutsche Bank National Trust Company and confirming debtor's chapter 13 plan

fr. 6/12/18; 9/18/18(stip)

Docket 52

**Tentative Ruling:**

At the last hearing, on June 12, 2018, the Court instructed the parties to mediate this matter by September 1, 2018. The parties have not filed any updates with the Court. What is the status of the parties' mediation?

**6/12/2018 Tentative:**

Deny.

**I. BACKGROUND**

On October 27, 2005, Freddy Benjamin Castro ("Debtor") and Imelda E. Castro executed a promissory note (the "Note"), made payable to Right Away Mortgage, Inc. ("Right Away"), in the principal amount of \$103,800. Declaration of Gina D'Elia (the "D'Elia Declaration") [doc. 54], ¶ 5, Exhibit 1. The Note was secured by a second position deed of trust (the "DOT") recorded against the real property located at 14206 Pierce Street, Pacoima, California 91331 (the "Pacoima Property"). *Id.*, ¶ 5, Exhibit 2. The DOT indicated that Debtor and Ms. Castro held the Pacoima Property as joint tenants. *Id.* Subsequently, Right Away assigned the Note and DOT to Deutsche Bank National Trust Company ("Deutsche Bank").

On September 12, 2017, Debtor filed a chapter 13 petition. In his schedule A/B, Debtor listed the Pacoima Property and valued the Pacoima Property at \$370,000. In his schedule D, Debtor listed a first priority deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$416,000. Debtor also listed the second priority DOT in favor of Deutsche Bank in the amount of \$103,800.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Concurrently with his schedules, Debtor filed a proposed chapter 13 plan (the "Plan") [doc. 2]. In the Plan, Debtor indicated that he intended to avoid Deutsche Bank's lien. Plan, Section V.F. On October 26, 2016, Deutsche Bank filed an objection the Plan [doc. 13], asserting that Debtor could not avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 1322(b)(2). Deutsche Bank also objected to Debtor's valuation of the Pacoima Property.

On November 2, 2016, Deutsche Bank filed claim no. 2-1, asserting a secured claim in the amount of \$151,042.92. On December 12, 2016, Debtor filed a motion to avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 506(d) (the "Motion to Avoid Lien") [doc. 19], valuing the Pacoima Property at \$360,000. Deutsche Bank opposed the Motion to Avoid Lien [doc. 22], again asserting that applicable law prohibited avoidance of Deutsche Bank's lien and disputing Debtor's valuation of the Pacoima Property. This time, Deutsche Bank also asserted that Debtor could not release his non-debtor spouse from liability.

On January 10, 2017, the Court held an initial hearing on the Motion to Avoid Lien. At that time, the Court continued the hearing on the Motion to Avoid Lien and set deadlines for Deutsche Bank to file a competing appraisal. At the initial hearing, Martin Weingarten appeared on behalf of Deutsche Bank. According to counsel for Deutsche Bank, Mr. Weingarten did not inform Deutsche Bank about the impending deadlines. Declaration of Nichole Glowin ("Glowin Declaration") [doc. 55], ¶ 11. Nevertheless, the appearance report reflected that the hearing was "[c]ontinued per tentative." *Id.*, ¶ 11, Exhibit 10.

On March 13, 2017, Deutsche Bank and Debtor entered into a stipulation to further continue the hearing on the Motion to Avoid Lien (the "Stipulation to Continue") [doc. 26]. On March 14, 2017, the Court entered an order approving the Stipulation to Continue [doc. 29].

On April 4, 2018, the Court held a continued hearing on the Motion to Avoid Lien. Mr. Weingarten again appeared on behalf of Deutsche Bank. Prior to the continued hearing, Deutsche Bank did not timely file an appraisal, and did not otherwise request a continuance of the hearing. As a result, in light of Deutsche Bank's failure to file an appraisal timely, the Court adopted the Debtor's valuation.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

On June 21, 2017, the Court entered an order granting the Motion to Avoid Lien (the "Order Avoiding Lien") [doc. 40]. On June 13, 2017, the Court held a confirmation hearing. Deutsche Bank appeared at the confirmation hearing. On June 29, 2017, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 42].

On March 28, 2018, Deutsche Bank filed a motion requesting relief from the Order to Avoid Lien and the Confirmation Order (the "Motion") [doc. 52], on the basis that Mr. Weingarten did not inform Deutsche Bank about the deadline to file an appraisal and on the alternative basis that the Court made a mistake of law by avoiding a lien on a property in which Ms. Castro, a non-filing co-obligor on the Note and the DOT, also holds an interest. On May 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 59]. On June 7, 2018, Deutsche Bank filed an untimely reply to the Opposition (the "Reply") [doc. 60].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)—

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- ...
- (6) any other reason that justifies relief.

### ***A. Rule 60(b)(1)***

#### ***i. Excusable Neglect***

Rule 60(b)(1) is not intended to remedy "mistakes [that] arose from attorney misconduct." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006). "Neither ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1)." *Engelson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992); *see also Casey v. Albertson's, Inc.*, 362

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

F.3d 1254, 1260 (9th Cir. 2004) ("As a general rule, parties are bound by the actions of their lawyers, and alleged attorney malpractice does not usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1).").

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [opposing party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed.2d 74 (1993).

Although *Pioneer* dealt with excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit Court of Appeals in *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382-83 (9th Cir. 1997), held that the *Pioneer* test also applies to determination of excusable neglect under Rule 60(b) ("We now hold that the equitable test set out in *Pioneer* applies to Rule 60(b) as well."). Significantly, although the trial court is granted discretion, the Court of Appeals has made clear that it is an abuse of that discretion to deny a Rule 60(b)(1) motion without considering (at a minimum) all four of the *Pioneer* factors. See *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (overturning denial of Rule 60(b)(1) motion because the trial court did not consider one of the four factors); *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing trial court's denial of Rule 60(b)(1) motion for failure to mention and consider the test in *Pioneer* and *Briones*). In *Lemoge*, the Court of Appeals further noted that although "prejudice to the movant is not an explicit *Pioneer-Briones* factor," it may be a relevant factor as one of the "'relevant circumstances' that should be considered when evaluating excusable neglect." *Lemoge*, 578 F.3d 1195.

Here, Deutsche Bank asserts that its conduct should be excused because Mr. Weingarten, Deutsche Bank's appearance attorney, neglected to inform Deutsche Bank about the filing deadlines set by the Court. For the reasons set forth below, Deutsche Bank has not demonstrated excusable neglect warranting vacating of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Order to Avoid Lien or the Confirmation Order.

*a. Prejudice to Other Parties*

Debtor will suffer prejudice if the Court vacates the Order to Avoid Lien and/or the Confirmation Order. If the Court vacates either order, Debtor will have to address how Debtor intends to treat Deutsche Bank's secured claim and will likely have to propose a modified chapter 13 plan almost a year after the Court confirmed the Plan. Vacating the Order to Avoid Lien and/or the Confirmation Order also will result in prejudice to other creditors of the estate, who may receive distributions in amounts different than the disbursements contemplated by the Plan. In addition, almost two years after the petition date, Debtor will have to spend time and resources again litigating valuation of the Pacoima Property. As such, this factor weighs against vacating either order on account of excusable neglect.

*b. Length of Delay and its Potential Impact on Judicial Proceedings*

Rule 60(c)(1) requires that "a motion under Rule 60(b) must be made within a reasonable time . . . and no more than a year after the entry of judgment or order." "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Lemoge*, 587 F.3d at 1196.

Debtor asserts that the Motion is untimely because Deutsche Bank filed the Motion over one year after the Court issued a ruling on the Motion to Avoid Lien. However, Rule 60(b) governs relief from final judgments, *orders* or proceedings. Here, the Court entered the Order to Avoid Lien on June 21, 2017, and the Confirmation Order on June 29, 2017. Deutsche Bank filed the Motion on March 28, 2017, less than a year after the Court's entry of the orders at issue.

Although Deutsche Bank filed the Motion within the one year deadline provided by Rule 60(b), the Court must still assess whether Deutsche Bank filed the Motion within a "reasonable" time frame. Here, Deutsche Bank appeared at the confirmation hearing on June 13, 2017, at which time Deutsche Bank opposed confirmation of the Plan and raised Deutsche Bank's objection to the avoidance of its lien. The Court informed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Deutsche Bank that it would confirm the Plan and avoid Deutsche Bank's lien. Rather than file a motion as soon as practical, Deutsche Bank waited eight months. Significantly, all of the information on which Deutsche Bank relies in the Motion was available to Deutsche Bank at the time the Court adjudicated both the Motion to Avoid Lien and confirmation of the Plan.

According to Deutsche Bank, it delayed filing the Motion because Deutsche Bank and Debtor continued to engage in settlement discussions. First, Deutsche Bank could have filed a motion for reconsideration while continuing to discuss settlement with Debtor. The option to attempt settlement with Debtor was not mutually exclusive from seeking relief from the Order to Avoid Lien or the Confirmation Order. Second, according to Deutsche Bank itself, Deutsche Bank had trouble communicating with Debtor's counsel for several months before Deutsche Bank decided to file the Motion. Despite several months of failing to reach an agreement with Debtor, Deutsche Bank continued to delay filing the Motion. Consequently, Deutsche Bank did not file the Motion within a reasonable time.

*c. Reason for the Delay/Delay in Reasonable Control of the Movant*

Again, Deutsche Bank attributes the delay in filing the Motion to Deutsche Bank's attempt to settle with Debtor after entry of the Order to Avoid Lien and the Confirmation Order. However, Deutsche Bank could have filed the Motion while continuing to discuss settlement with Debtor. In addition, Deutsche Bank did not learn of any new evidence or law that caused Deutsche Bank to delay filing the Motion for almost one year. Because Deutsche Bank had reasonable control of the delay at all times, this factor also weighs against granting the Motion.

*d. Whether Movant Acted in Good Faith*

There is no evidence on the record demonstrating that Deutsche Bank did not act in good faith. Nevertheless, Deutsche Bank attempts to exonerate itself from responsibility with respect to missing the deadline to file its competing appraisal. Although the appearance report did not include the deadlines provided by the Court in the Court's ruling, the appearance report explicitly referred to the tentative ruling. Glowin Declaration, ¶ 11, Exhibit 10. The Court's tentative rulings are available to the public on the Court's website. Thus, Deutsche Bank could have easily accessed

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**  
the deadlines set by the Court.

**Chapter 13**

Even if a lack of communication between Mr. Weingarten and Deutsche Bank led to Deutsche Bank's failure to file an appraisal by the required deadline, Deutsche Bank has not provided a reasonable excuse for its delay of almost one year in bringing this Motion. As noted above, vacating the Order to Avoid Lien and/or the Confirmation Order would be extremely prejudicial to Debtor and other creditors of the estate. At the time the Court entered both orders, Deutsche Bank had all of the information and law on which it relies. Debtor and the other creditors should not bear the brunt of Deutsche Bank's mistake and highly belated response to the Order to Avoid Lien and/or the Confirmation Order. Under these facts, excusable neglect does not warrant vacating the orders at issue.

*ii. Mistake of Law*

The alternative basis for relief under Rule 60(b)(1) set forth by Deutsche Bank is that avoidance of Deutsche Bank's lien and confirmation of the Plan was a mistake of law. Specifically, Deutsche Bank asserts that the Court did not have the ability to release the liability of Ms. Castro, as a non-debtor, or Ms. Castro's property through either the Order to Avoid Lien or the Confirmation Order.

A chapter 13 plan may "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[.] 11 U.S.C. § 1322(b)(2). Although § 1322(b)(2) prohibits stripping of liens secured only by a debtor's principal residence, Ninth Circuit authority allows a chapter 13 debtor to strip from a primary residence any junior liens that are wholly unsecured. *In re Zimmer*, 313 F.3d 1220, 1225 (9th Cir. 2002) ("Without a secured claim, a creditor's rights may be modified.").

Here, because Deutsche Bank has not shown excusable neglect for the reasons set forth above, the Court will not consider Deutsche Bank's competing appraisal. Using the Court's original valuation of \$360,000, Deutsche Bank's lien would normally be subject to avoidance under *Zimmer*. The issue is whether the Court had the authority to strip Deutsche Bank's junior lien at all, despite Deutsche Bank's status as a wholly unsecured lienholder, if Debtor and Ms. Castro, a non-filing co-obligor, held the Pacoima Property as joint tenants.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Pursuant to 11 U.S.C. § 524(e), "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." In other words, the Court must decide if the Pacoima Property, or any part of it, constitutes "property of any other entity," such that this Court would not have authority to afford relief as to that portion of the Pacoima Property.

Here, the DOT notes that Debtor and Ms. Castro hold the property as joint tenants. D'Elia Declaration, ¶ 5, Exhibit 2. In a joint tenancy, joint tenants divide a property in equal shares, with a joint tenant's share considered his or her own separate property. Cal. Civ. Code § 683(a); *see also In re Obedian*, 546 B.R. 409, 412 (Bankr. C.D. Cal. 2016). Moreover, California Evidence Code § 662 creates a record title presumption whereby the nature of ownership set forth in title to the property controls and may be rebutted only by clear and convincing evidence. The analysis is different, however, if the joint tenants are married.

On the other hand, California Family Code § 760, provides that, "except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." In 2014, the California Supreme Court issued a decision in *In re Valli*, 58 Cal.4th 1396 (2014), wherein the court addressed which statutory presumption prevailed in the context of a marital dissolution. In *Valli*, the husband had designated his wife as the "sole owner and beneficiary" on a life insurance policy, which was purchased with community property funds. *Valli*, 58 Cal.4th at 1400. Upon dissolution, the husband argued that the policy was community property despite the title of the policy being in the wife's name. *Id.* The California Supreme Court agreed, holding that the community property presumption trumps the record title presumption found in California Evidence Code § 662 in a dissolution proceeding. *Id.*, at 1406.

After *Valli*, there was some ambiguity regarding whether the community property presumption serves to override the record title presumption in a context other than a marital dissolution. At least two bankruptcy courts found that the holding in *Valli* also applied in the bankruptcy context. *Obedian*, 546 B.R. 409; *In re Collins*, 2016 WL 4570413 (Bankr. S.D. Cal. Aug. 29, 2016). Recently, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") issued a decision laying the matter to rest. *In re*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

*Brace*, 566 B.R. 13 (B.A.P. 9th Cir. 2017).

In *Brace*, the debtor and his non-debtor spouse acquired a residence and additional real properties in California as "husband and wife as joint tenants." *Id.*, at 16. The debtor and his spouse then placed the properties in an irrevocable trust, with the debtor's spouse designated as the beneficiary of the trust and the debtor acting as the sole trustee of the trust. *Id.* Subsequently, the debtor filed a chapter 7 petition. *Id.* The chapter 7 trustee then filed a fraudulent transfer action, requesting a declaration that the properties were property of the estate and seeking to avoid the transfer of the properties to the trust. *Id.* The bankruptcy court ruled in favor of the chapter 7 trustee, holding that the properties were property of the estate. *Id.*

The debtor and his non-filing spouse then asked the bankruptcy court to amend the judgment to provide that the properties were owned one half by the debtor and one half by his non-filing spouse, and that only the debtor's interests in the properties were property of the estate. *Id.*, at 17. The bankruptcy court disagreed, holding that despite the record title showing that the debtor and his non-filing spouse took the properties as joint tenants, the properties were acquired with community assets and presumptively constituted community property. *Id.* After a lengthy and thorough analysis, the BAP affirmed the bankruptcy court's holding. *Id.*, at 18-28.

The BAP first assessed the holdings of *Valli* and prior Ninth Circuit case law regarding the record title presumption. *Id.*, at 18-21. In so doing, the BAP found, like *Obedian* and *Collins*, that the California Supreme Court's holding in *Valli* superseded the Ninth Circuit Court of Appeals' prior decision in *In re Summers*, 332 F.3d 1240 (9th Cir. 2003), where the Court of Appeals had held that the community property presumption is rebutted when a married couple acquires property as joint tenants. *Id.*, at 20-23.

Importantly, the BAP held that the community property presumption applies despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding and did not attempt to transmute the properties like the parties in *Valli*. *Id.*, at 23-25. Given the facts and extensive policy in *Brace*, the BAP held that "[a]lthough there may be instances where the record title presumption could apply to marital property..., as a general rule, California's community property presumption applies in disputes in bankruptcy involving the characterization of marital property."



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

*Id.*, at 19. The BAP reached this holding: (A) despite the fact that the debtor and his non-filing spouse acquired the properties as joint tenants; (B) despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding; and (C) despite the fact that transmutation was not at issue in *Brace*, unlike in *Valli*.

In light of *Brace*, the community property presumption applies despite the fact that the title to the Pacoima Property may reflect that the parties hold the Pacoima Property as joint tenants. The record does not reflect any evidence that would serve to rebut the community property presumption. Under *Brace*, the mere mention of Debtor and Ms. Castro as joint tenants in the deed of trust is insufficient to rebut the presumption. In other words, the Court would need additional, strong evidence confirming that Debtor and Ms. Castro intended to take the Pacoima Property as joint tenants. Absent such evidence, the Pacoima Property is properly characterized as community property.

Pursuant to 11 U.S.C. § 541(a)(2), the commencement of a bankruptcy case creates an estate comprised, in part, of "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is... under the sole, equal, or joint management and control of the debtor; or... liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable." 11 U.S.C. § 541(a)(2)(A), (B).

Because the presumption is that the Pacoima Property is community property, upon commencement of Debtor's case, the Pacoima Property became property of the estate *in full*. As a result, the provision of 11 U.S.C. § 524(e) setting forth that the property of another entity is not relieved of liability is not applicable here.

In fact, the BAP has explicitly found that community property is subject to lien stripping under 11 U.S.C. § 506 even if only one spouse has filed for bankruptcy protection. *In re Maynard*, 264 B.R. 209 (B.A.P. 9th Cir. 2001). In *Maynard*, the debtor filed a chapter 13 petition and subsequently filed a motion to avoid a lien pursuant to 11 U.S.C § 506(d). *Id.*, at 211. The bankruptcy ruled in favor of the debtor and avoided the lienholder's lien. *Id.*, at 213.

On appeal, the lienholder argued that the bankruptcy court erred in avoiding its lien because the debtor's non-debtor spouse also held an interest in the subject property.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

*Id.*, at 214. The BAP disagreed. *Id.* The BAP found that, in accordance with 11 U.S.C. § 541(a)(2), the community property became property of the estate and, as a result, "the entire lien was subject to valuation and avoidance under § 506." *Id.*

Pursuant to *Brace* and *Maynard*, the Court had the authority to avoid Deutsche Bank's lien in full. Because Deutsche Bank has not demonstrated excusable neglect, *supra*, Debtor's appraisal stands as the only evidence of value of the Pacoima Property. That appraisal reflected the value of the Pacoima Property as \$360,000. Using that valuation, Deutsche Bank's lien was entirely unsecured, and the Court appropriately avoided Deutsche Bank's lien in accordance with the authorities above.

Consequently, Deutsche Bank has not shown that the Court made a mistake of law warranting reconsideration of either the Order to Avoid Lien or the Confirmation Order.

***B. Rule 60(b)(6)***

As with Rule 60(b)(1), a request under Rule 60(b)(6) "must be made within a reasonable time." Rule 60(c)(1). For the same reasons set forth above, Deutsche Bank did not file its request for relief within a reasonable time.

Rule 60(b)(6) is the "catch-all provision" of Rule 60(b) "that is read as being exclusive of the other grounds for relief listed in Rule 60." *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 n.8 (9th Cir. 2002). "In order to obtain such relief from a judgment, however, extraordinary circumstances must exist." *In re Estrada*, 568 B.R. 533, 541 (Bankr C.D. Cal. 2017) (citing *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982)). "The burden is on the moving party to bring himself within the purviews of Rule 60(b)(6)." *In re Hammer*, 112 B.R. 341, 345 (B.A.P. 9th Cir. 1990).

First, Deutsche Bank does not provide a different basis for relief under the catch-all provision of Rule 60(b)(6). Deutsche Bank mostly relies on the same grounds as its request for relief under Rule 60(b)(1). Moreover, Deutsche Bank has not shown the type of "extraordinary circumstances" that merit relief under Rule 60(b)(6). As set forth above, the Court did not make a mistake of law that deprived Deutsche Bank of its rights. Rather, Deutsche Bank did not timely file an appraisal, and then waited nearly a year to file the Motion. Any injustice suffered by Deutsche Bank is a result of Deutsche Bank's own delay. There being no other facts showing the type of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

manifest injustice required for purposes of Rule 60(b)(6), the Court also will not vacate the Order to Avoid Lien or Confirmation Order under this subsection.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

**6/12/2018 Tentative:**

Deny.

**I. BACKGROUND**

On October 27, 2005, Freddy Benjamin Castro ("Debtor") and Imelda E. Castro executed a promissory note (the "Note"), made payable to Right Away Mortgage, Inc. ("Right Away"), in the principal amount of \$103,800. Declaration of Gina D'Elia (the "D'Elia Declaration") [doc. 54], ¶ 5, Exhibit 1. The Note was secured by a second position deed of trust (the "DOT") recorded against the real property located at 14206 Pierce Street, Pacoima, California 91331 (the "Pacoima Property"). *Id.*, ¶ 5, Exhibit 2. The DOT indicated that Debtor and Ms. Castro held the Pacoima Property as joint tenants. *Id.* Subsequently, Right Away assigned the Note and DOT to Deutsche Bank National Trust Company ("Deutsche Bank").

On September 12, 2017, Debtor filed a chapter 13 petition. In his schedule A/B, Debtor listed the Pacoima Property and valued the Pacoima Property at \$370,000. In his schedule D, Debtor listed a first priority deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$416,000. Debtor also listed the second priority DOT in favor of Deutsche Bank in the amount of \$103,800.

Concurrently with his schedules, Debtor filed a proposed chapter 13 plan (the "Plan") [doc. 2]. In the Plan, Debtor indicated that he intended to avoid Deutsche Bank's lien. Plan, Section V.F. On October 26, 2016, Deutsche Bank filed an objection the Plan [doc. 13], asserting that Debtor could not avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 1322(b)(2). Deutsche Bank also objected to Debtor's valuation of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**  
Pacoima Property.

**Chapter 13**

On November 2, 2016, Deutsche Bank filed claim no. 2-1, asserting a secured claim in the amount of \$151,042.92. On December 12, 2016, Debtor filed a motion to avoid Deutsche Bank's lien pursuant to 11 U.S.C. § 506(d) (the "Motion to Avoid Lien") [doc. 19], valuing the Pacoima Property at \$360,000. Deutsche Bank opposed the Motion to Avoid Lien [doc. 22], again asserting that applicable law prohibited avoidance of Deutsche Bank's lien and disputing Debtor's valuation of the Pacoima Property. This time, Deutsche Bank also asserted that Debtor could not release his non-debtor spouse from liability.

On January 10, 2017, the Court held an initial hearing on the Motion to Avoid Lien. At that time, the Court continued the hearing on the Motion to Avoid Lien and set deadlines for Deutsche Bank to file a competing appraisal. At the initial hearing, Martin Weingarten appeared on behalf of Deutsche Bank. According to counsel for Deutsche Bank, Mr. Weingarten did not inform Deutsche Bank about the impending deadlines. Declaration of Nichole Glowin ("Glowin Declaration") [doc. 55], ¶ 11. Nevertheless, the appearance report reflected that the hearing was "[c]ontinued per tentative." *Id.*, ¶ 11, Exhibit 10.

On March 13, 2017, Deutsche Bank and Debtor entered into a stipulation to further continue the hearing on the Motion to Avoid Lien (the "Stipulation to Continue") [doc. 26]. On March 14, 2017, the Court entered an order approving the Stipulation to Continue [doc. 29].

On April 4, 2018, the Court held a continued hearing on the Motion to Avoid Lien. Mr. Weingarten again appeared on behalf of Deutsche Bank. Prior to the continued hearing, Deutsche Bank did not timely file an appraisal, and did not otherwise request a continuance of the hearing. As a result, in light of Deutsche Bank's failure to file an appraisal timely, the Court adopted the Debtor's valuation.

On June 21, 2017, the Court entered an order granting the Motion to Avoid Lien (the "Order Avoiding Lien") [doc. 40]. On June 13, 2017, the Court held a confirmation hearing. Deutsche Bank appeared at the confirmation hearing. On June 29, 2017, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 42].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

On March 28, 2018, Deutsche Bank filed a motion requesting relief from the Order to Avoid Lien and the Confirmation Order (the "Motion") [doc. 52], on the basis that Mr. Weingarten did not inform Deutsche Bank about the deadline to file an appraisal and on the alternative basis that the Court made a mistake of law by avoiding a lien on a property in which Ms. Castro, a non-filing co-obligor on the Note and the DOT, also holds an interest. On May 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 59]. On June 7, 2018, Deutsche Bank filed an untimely reply to the Opposition (the "Reply") [doc. 60].

## **II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)—

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:

- (2) mistake, inadvertence, surprise, or excusable neglect;
- ...
- (7) any other reason that justifies relief.

### **C. Rule 60(b)(1)**

#### ***i. Excusable Neglect***

Rule 60(b)(1) is not intended to remedy "mistakes [that] arose from attorney misconduct." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006). "Neither ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1)." *Engelson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992); *see also Casey v. Albertson's, Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) ("As a general rule, parties are bound by the actions of their lawyers, and alleged attorney malpractice does not usually provide a basis to set aside a judgment pursuant to Rule 60(b)(1).").

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT...**

**Freddy Benjamin Castro**

**Chapter 13**

relevant circumstances surrounding the party's omission. These include . . . [1] the danger of prejudice to the [opposing party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

*Pioneer Inv. Servs. Co.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed.2d 74 (1993).

Although *Pioneer* dealt with excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit Court of Appeals in *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382-83 (9th Cir. 1997), held that the *Pioneer* test also applies to determination of excusable neglect under Rule 60(b) ("We now hold that the equitable test set out in *Pioneer* applies to Rule 60(b) as well."). Significantly, although the trial court is granted discretion, the Court of Appeals has made clear that it is an abuse of that discretion to deny a Rule 60(b)(1) motion without considering (at a minimum) all four of the *Pioneer* factors. See *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (overturning denial of Rule 60(b)(1) motion because the trial court did not consider one of the four factors); *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing trial court's denial of Rule 60(b)(1) motion for failure to mention and consider the test in *Pioneer* and *Briones*). In *Lemoge*, the Court of Appeals further noted that although "prejudice to the movant is not an explicit *Pioneer-Briones* factor," it may be a relevant factor as one of the "'relevant circumstances' that should be considered when evaluating excusable neglect." *Lemoge*, 578 F.3d 1195.

Here, Deutsche Bank asserts that its conduct should be excused because Mr. Weingarten, Deutsche Bank's appearance attorney, neglected to inform Deutsche Bank about the filing deadlines set by the Court. For the reasons set forth below, Deutsche Bank has not demonstrated excusable neglect warranting vacating of the Order to Avoid Lien or the Confirmation Order.

*e. Prejudice to Other Parties*

Debtor will suffer prejudice if the Court vacates the Order to Avoid Lien and/or the Confirmation Order. If the Court vacates either order, Debtor will have to address

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

how Debtor intends to treat Deutsche Bank's secured claim and will likely have to propose a modified chapter 13 plan almost a year after the Court confirmed the Plan. Vacating the Order to Avoid Lien and/or the Confirmation Order also will result in prejudice to other creditors of the estate, who may receive distributions in amounts different than the disbursements contemplated by the Plan. In addition, almost two years after the petition date, Debtor will have to spend time and resources again litigating valuation of the Pacoima Property. As such, this factor weighs against vacating either order on account of excusable neglect.

*f. Length of Delay and its Potential Impact on Judicial Proceedings*

Rule 60(c)(1) requires that "a motion under Rule 60(b) must be made within a reasonable time . . . and no more than a year after the entry of judgment or order." "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Lemoge*, 587 F.3d at 1196.

Debtor asserts that the Motion is untimely because Deutsche Bank filed the Motion over one year after the Court issued a ruling on the Motion to Avoid Lien. However, Rule 60(b) governs relief from final judgments, *orders* or proceedings. Here, the Court entered the Order to Avoid Lien on June 21, 2017, and the Confirmation Order on June 29, 2017. Deutsche Bank filed the Motion on March 28, 2017, less than a year after the Court's entry of the orders at issue.

Although Deutsche Bank filed the Motion within the one year deadline provided by Rule 60(b), the Court must still assess whether Deutsche Bank filed the Motion within a "reasonable" time frame. Here, Deutsche Bank appeared at the confirmation hearing on June 13, 2017, at which time Deutsche Bank opposed confirmation of the Plan and raised Deutsche Bank's objection to the avoidance of its lien. The Court informed Deutsche Bank that it would confirm the Plan and avoid Deutsche Bank's lien. Rather than file a motion as soon as practical, Deutsche Bank waited eight months. Significantly, all of the information on which Deutsche Bank relies in the Motion was available to Deutsche Bank at the time the Court adjudicated both the Motion to Avoid Lien and confirmation of the Plan.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

According to Deutsche Bank, it delayed filing the Motion because Deutsche Bank and Debtor continued to engage in settlement discussions. First, Deutsche Bank could have filed a motion for reconsideration while continuing to discuss settlement with Debtor. The option to attempt settlement with Debtor was not mutually exclusive from seeking relief from the Order to Avoid Lien or the Confirmation Order. Second, according to Deutsche Bank itself, Deutsche Bank had trouble communicating with Debtor's counsel for several months before Deutsche Bank decided to file the Motion. Despite several months of failing to reach an agreement with Debtor, Deutsche Bank continued to delay filing the Motion. Consequently, Deutsche Bank did not file the Motion within a reasonable time.

*g. Reason for the Delay/Delay in Reasonable Control of the Movant*

Again, Deutsche Bank attributes the delay in filing the Motion to Deutsche Bank's attempt to settle with Debtor after entry of the Order to Avoid Lien and the Confirmation Order. However, Deutsche Bank could have filed the Motion while continuing to discuss settlement with Debtor. In addition, Deutsche Bank did not learn of any new evidence or law that caused Deutsche Bank to delay filing the Motion for almost one year. Because Deutsche Bank had reasonable control of the delay at all times, this factor also weighs against granting the Motion.

*h. Whether Movant Acted in Good Faith*

There is no evidence on the record demonstrating that Deutsche Bank did not act in good faith. Nevertheless, Deutsche Bank attempts to exonerate itself from responsibility with respect to missing the deadline to file its competing appraisal. Although the appearance report did not include the deadlines provided by the Court in the Court's ruling, the appearance report explicitly referred to the tentative ruling. Glowin Declaration, ¶ 11, Exhibit 10. The Court's tentative rulings are available to the public on the Court's website. Thus, Deutsche Bank could have easily accessed the deadlines set by the Court.

Even if a lack of communication between Mr. Weingarten and Deutsche Bank led to Deutsche Bank's failure to file an appraisal by the required deadline, Deutsche Bank has not provided a reasonable excuse for its delay of almost one year in bringing this Motion. As noted above, vacating the Order to Avoid Lien and/or the Confirmation



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Order would be extremely prejudicial to Debtor and other creditors of the estate. At the time the Court entered both orders, Deutsche Bank had all of the information and law on which it relies. Debtor and the other creditors should not bear the brunt of Deutsche Bank's mistake and highly belated response to the Order to Avoid Lien and/or the Confirmation Order. Under these facts, excusable neglect does not warrant vacating the orders at issue.

*ii. Mistake of Law*

The alternative basis for relief under Rule 60(b)(1) set forth by Deutsche Bank is that avoidance of Deutsche Bank's lien and confirmation of the Plan was a mistake of law. Specifically, Deutsche Bank asserts that the Court did not have the ability to release the liability of Ms. Castro, as a non-debtor, or Ms. Castro's property through either the Order to Avoid Lien or the Confirmation Order.

A chapter 13 plan may "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[.] 11 U.S.C. § 1322(b)(2). Although § 1322(b)(2) prohibits stripping of liens secured only by a debtor's principal residence, Ninth Circuit authority allows a chapter 13 debtor to strip from a primary residence any junior liens that are wholly unsecured. *In re Zimmer*, 313 F.3d 1220, 1225 (9th Cir. 2002) ("Without a secured claim, a creditor's rights may be modified.").

Here, because Deutsche Bank has not shown excusable neglect for the reasons set forth above, the Court will not consider Deutsche Bank's competing appraisal. Using the Court's original valuation of \$360,000, Deutsche Bank's lien would normally be subject to avoidance under *Zimmer*. The issue is whether the Court had the authority to strip Deutsche Bank's junior lien at all, despite Deutsche Bank's status as a wholly unsecured lienholder, if Debtor and Ms. Castro, a non-filing co-obligor, held the Pacoima Property as joint tenants.

Pursuant to 11 U.S.C. § 524(e), "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." In other words, the Court must decide if the Pacoima Property, or any part of it, constitutes "property of any other entity," such that this Court would not have authority to afford relief as to that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**  
portion of the Pacoima Property.

**Chapter 13**

Here, the DOT notes that Debtor and Ms. Castro hold the property as joint tenants. D'Elia Declaration, ¶ 5, Exhibit 2. In a joint tenancy, joint tenants divide a property in equal shares, with a joint tenant's share considered his or her own separate property. Cal. Civ. Code § 683(a); *see also In re Obedian*, 546 B.R. 409, 412 (Bankr. C.D. Cal. 2016). Moreover, California Evidence Code § 662 creates a record title presumption whereby the nature of ownership set forth in title to the property controls and may be rebutted only by clear and convincing evidence. The analysis is different, however, if the joint tenants are married.

On the other hand, California Family Code § 760, provides that, "except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." In 2014, the California Supreme Court issued a decision in *In re Valli*, 58 Cal.4th 1396 (2014), wherein the court addressed which statutory presumption prevailed in the context of a marital dissolution. In *Valli*, the husband had designated his wife as the "sole owner and beneficiary" on a life insurance policy, which was purchased with community property funds. *Valli*, 58 Cal.4th at 1400. Upon dissolution, the husband argued that the policy was community property despite the title of the policy being in the wife's name. *Id.* The California Supreme Court agreed, holding that the community property presumption trumps the record title presumption found in California Evidence Code § 662 in a dissolution proceeding. *Id.*, at 1406.

After *Valli*, there was some ambiguity regarding whether the community property presumption serves to override the record title presumption in a context other than a marital dissolution. At least two bankruptcy courts found that the holding in *Valli* also applied in the bankruptcy context. *Obedian*, 546 B.R. 409; *In re Collins*, 2016 WL 4570413 (Bankr. S.D. Cal. Aug. 29, 2016). Recently, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") issued a decision laying the matter to rest. *In re Brace*, 566 B.R. 13 (B.A.P. 9th Cir. 2017).

In *Brace*, the debtor and his non-debtor spouse acquired a residence and additional real properties in California as "husband and wife as joint tenants." *Id.*, at 16. The debtor and his spouse then placed the properties in an irrevocable trust, with the debtor's spouse designated as the beneficiary of the trust and the debtor acting as the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, October 9, 2018

Hearing Room 301

---

11:30 AM

CONT... **Freddy Benjamin Castro**

**Chapter 13**

sole trustee of the trust. *Id.* Subsequently, the debtor filed a chapter 7 petition. *Id.* The chapter 7 trustee then filed a fraudulent transfer action, requesting a declaration that the properties were property of the estate and seeking to avoid the transfer of the properties to the trust. *Id.* The bankruptcy court ruled in favor of the chapter 7 trustee, holding that the properties were property of the estate. *Id.*

The debtor and his non-filing spouse then asked the bankruptcy court to amend the judgment to provide that the properties were owned one half by the debtor and one half by his non-filing spouse, and that only the debtor's interests in the properties were property of the estate. *Id.*, at 17. The bankruptcy court disagreed, holding that despite the record title showing that the debtor and his non-filing spouse took the properties as joint tenants, the properties were acquired with community assets and presumptively constituted community property. *Id.* After a lengthy and thorough analysis, the BAP affirmed the bankruptcy court's holding. *Id.*, at 18-28.

The BAP first assessed the holdings of *Valli* and prior Ninth Circuit case law regarding the record title presumption. *Id.*, at 18-21. In so doing, the BAP found, like *Obedian* and *Collins*, that the California Supreme Court's holding in *Valli* superseded the Ninth Circuit Court of Appeals' prior decision in *In re Summers*, 332 F.3d 1240 (9th Cir. 2003), where the Court of Appeals had held that the community property presumption is rebutted when a married couple acquires property as joint tenants. *Id.*, at 20-23.

Importantly, the BAP held that the community property presumption applies despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding and did not attempt to transmute the properties like the parties in *Valli*. *Id.*, at 23-25. Given the facts and extensive policy in *Brace*, the BAP held that "[a]lthough there may be instances where the record title presumption could apply to marital property..., as a general rule, California's community property presumption applies in disputes in bankruptcy involving the characterization of marital property." *Id.*, at 19. The BAP reached this holding: (A) despite the fact that the debtor and his non-filing spouse acquired the properties as joint tenants; (B) despite the fact that the debtor and his non-filing spouse were not parties to a dissolution proceeding; and (C) despite the fact that transmutation was not at issue in *Brace*, unlike in *Valli*.

In light of *Brace*, the community property presumption applies despite the fact that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

title to the Pacoima Property may reflect that the parties hold the Pacoima Property as joint tenants. The record does not reflect any evidence that would serve to rebut the community property presumption. Under *Brace*, the mere mention of Debtor and Ms. Castro as joint tenants in the deed of trust is insufficient to rebut the presumption. In other words, the Court would need additional, strong evidence confirming that Debtor and Ms. Castro intended to take the Pacoima Property as joint tenants. Absent such evidence, the Pacoima Property is properly characterized as community property.

Pursuant to 11 U.S.C. § 541(a)(2), the commencement of a bankruptcy case creates an estate comprised, in part, of "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is... under the sole, equal, or joint management and control of the debtor; or... liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable." 11 U.S.C. § 541(a)(2)(A), (B).

Because the presumption is that the Pacoima Property is community property, upon commencement of Debtor's case, the Pacoima Property became property of the estate *in full*. As a result, the provision of 11 U.S.C. § 524(e) setting forth that the property of another entity is not relieved of liability is not applicable here.

In fact, the BAP has explicitly found that community property is subject to lien stripping under 11 U.S.C. § 506 even if only one spouse has filed for bankruptcy protection. *In re Maynard*, 264 B.R. 209 (B.A.P. 9th Cir. 2001). In *Maynard*, the debtor filed a chapter 13 petition and subsequently filed a motion to avoid a lien pursuant to 11 U.S.C § 506(d). *Id.*, at 211. The bankruptcy ruled in favor of the debtor and avoided the lienholder's lien. *Id.*, at 213.

On appeal, the lienholder argued that the bankruptcy court erred in avoiding its lien because the debtor's non-debtor spouse also held an interest in the subject property. *Id.*, at 214. The BAP disagreed. *Id.* The BAP found that, in accordance with 11 U.S.C. § 541(a)(2), the community property became property of the estate and, as a result, "the entire lien was subject to valuation and avoidance under § 506." *Id.*

Pursuant to *Brace* and *Maynard*, the Court had the authority to avoid Deutsche Bank's lien in full. Because Deutsche Bank has not demonstrated excusable neglect, *supra*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

Debtor's appraisal stands as the only evidence of value of the Pacoima Property. That appraisal reflected the value of the Pacoima Property as \$360,000. Using that valuation, Deutsche Bank's lien was entirely unsecured, and the Court appropriately avoided Deutsche Bank's lien in accordance with the authorities above. Consequently, Deutsche Bank has not shown that the Court made a mistake of law warranting reconsideration of either the Order to Avoid Lien or the Confirmation Order.

***D. Rule 60(b)(6)***

As with Rule 60(b)(1), a request under Rule 60(b)(6) "must be made within a reasonable time." Rule 60(c)(1). For the same reasons set forth above, Deutsche Bank did not file its request for relief within a reasonable time.

Rule 60(b)(6) is the "catch-all provision" of Rule 60(b) "that is read as being exclusive of the other grounds for relief listed in Rule 60." *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 n.8 (9th Cir. 2002). "In order to obtain such relief from a judgment, however, extraordinary circumstances must exist." *In re Estrada*, 568 B.R. 533, 541 (Bankr C.D. Cal. 2017) (citing *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982)). "The burden is on the moving party to bring himself within the purviews of Rule 60(b)(6)." *In re Hammer*, 112 B.R. 341, 345 (B.A.P. 9th Cir. 1990).

First, Deutsche Bank does not provide a different basis for relief under the catch-all provision of Rule 60(b)(6). Deutsche Bank mostly relies on the same grounds as its request for relief under Rule 60(b)(1). Moreover, Deutsche Bank has not shown the type of "extraordinary circumstances" that merit relief under Rule 60(b)(6). As set forth above, the Court did not make a mistake of law that deprived Deutsche Bank of its rights. Rather, Deutsche Bank did not timely file an appraisal, and then waited nearly a year to file the Motion. Any injustice suffered by Deutsche Bank is a result of Deutsche Bank's own delay. There being no other facts showing the type of manifest injustice required for purposes of Rule 60(b)(6), the Court also will not vacate the Order to Avoid Lien or Confirmation Order under this subsection.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Freddy Benjamin Castro**

**Chapter 13**

**Party Information**

**Debtor(s):**

Freddy Benjamin Castro

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, October 9, 2018

Hearing Room 301

11:30 AM

1:18-10982 Gabriel Medina

Chapter 13

#70.00 Motion re: objection to claim number 4-1 by claimant  
Edge Holdings Company, LLC.

Docket 58

**Tentative Ruling:**

Grant; sustain objection to claim 4-1 on the Court's claim register.

**I. BACKGROUND**

On April 19, 2018, Gabriel Medina (the "Debtor") filed a voluntary chapter 13 petition. The Debtor owns the real property located at 15143 Polk Street, Sylmar, CA 91342 (the "Property").

In March 2009, Debtor alleges that he sought assistance from Michael Herrera in procuring a loan modification on the Property [Declaration of Gabriel Medina ("Medina Decl."). ¶ 3]. Debtor claims that Mr. Herrera stated that in order to obtain the loan modification, the Property would be held in trust by Mr. Herrera, who would negotiate the note down on Debtor's behalf [*Id.*, at ¶ 4].

Debtor contends that unbeknownst to him, Mr. Herrera executed and fraudulently recorded documents purporting to be deeds transferring ownership of the Property at least five times [*Id.*, at ¶ 5]. On January 26, 2012, one of these alleged transfers occurred [*Id.*]. A deed was executed and recorded ("Claimant's Deed of Trust"), which purported to transfer title of the Property from M & J Development Group, LLC to The Edge Holdings Company, LLC ("Claimant") [*Id.*].

On April 10, 2014, Debtor alleges that he was served a Three-Day Notice to Quit [*Id.*, at ¶ 6]. On May 2, 2014, Debtor claims that Claimant filed an unlawful detainer action in the Los Angeles Superior Court against Debtor and his wife to vacate the Property [*Id.*]. The state court entered judgment against Debtor and awarded Claimant \$6,098.00 in restitution and possession of the Property (the "Unlawful Detainer Judgement") [Claim 4-1, Exh. 1].

Debtor retained counsel and filed a lawsuit against numerous defendants including

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

Mr. Herrera and Claimant on several causes of action, which included an action to quiet title [Medina Decl., ¶ 7]. On October 5, 2016, the state court entered judgement (the "Judgment") in favor of Debtor [doc. 58, Exh. A]. The state court ordered that any deeds executed or recorded by Mr. Herrera, Claimant, and the other defendants in the action were voided and canceled. Furthermore, the state court ordered that Debtor was the owner in fee simple of the Property, free and clear of any interest, claim, or lien of any of the defendants in this action. The state court awarded Debtor approximately \$497,982.07 in damages [doc. 58, Exh. A].

On June 29, 2018, Claimant filed proof of claim no. 4-1 for the amount of \$6,098.00 (the "Claim"). The basis of the Claim is the Unlawful Detainer Judgment.

On August 29, 2018, Debtor filed a *Motion Objecting to Claim 4-1 Filed by Edge Holdings Company, LLC Pursuant to 11 U.S.C. §502(b)(1)* (the "Objection") [doc. 58]. As of October 1, 2018, no opposition has been filed.

## **II. DISCUSSION**

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. FRBP 3001(c)(1) provides that when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Debtor seeks disallowance of the Claim on the grounds that the Claimant lacks standing to bring the Claim. It appears that Debtor is correct. As Debtor notes, the Judgment quieted title in favor of Debtor and against Claimant, Mr. Herrera, and the other named defendants. The Judgment held that any deed previously executed or recorded as to the Property by Claimant, Mr. Herrera, or the other defendants was void and canceled. The Unlawful Detainer Judgment appears to be based on Claimant's Deed of Trust, which was executed and recorded before the Judgment was entered. Thus, Claimant's Deed of Trust appears to be void and canceled. As such, it appears that the Unlawful Detainer Judgment is void. Furthermore, the state court ordered that Debtor was the owner in fee simple of the Property, free and clear of any interest, claim, or lien of any of the defendants in the action.

### **III. CONCLUSION**

In light of the forgoing, the Court will sustain the Objection.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase  
Sedoo Manu

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

---

11:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11350 Robert Earl Tetreault, Jr. and Erin Leigh O'Connor**

**Chapter 13**

**#71.00** Trustee's objection to debtors' claim of exemption

Docket 21

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtors filed an amended Schedule C removing their claim of exemption under California Code of Civil Procedure § 704.060 [doc. 26]. Consequently, the Court will overrule the chapter 13 trustee's objection without prejudice.

The chapter 13 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Robert Earl Tetreault Jr.

Represented By  
Julie J Villalobos

**Joint Debtor(s):**

Erin Leigh O'Connor

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11799 Farahnaz Alvand**

**Chapter 13**

**#72.00** Order to show cause why debtor's counsel should not disgorge fees for failure to perform services.

Docket 33

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Farahnaz Alvand

Represented By  
Armen Shaghzo

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 9, 2018**

**Hearing Room 301**

11:30 AM

**1:14-12897 Mati Timor**

**Chapter 13**

**#73.00** Debtor's motion for authority to refinance real property  
under LBR 3015-1

Docket 156

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Mati Timor

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:14-10704 Rogelio Rios Robles and Florencia Martinez Rios**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 9/5/18

Docket 113

**Tentative Ruling:**

**Tentative Ruling from 9/5/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Rogelio Rios Robles

Represented By  
Leonard Pena

**Joint Debtor(s):**

Florencia Martinez Rios

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Rogelio Rios Robles and Florencia Martinez Rios  
Leonard Pena**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 10, 2018

Hearing Room 301

9:30 AM

1:18-11299 James Lamont Dubose

Chapter 13

#2.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

fr. 9/5/18

**Stip for adequate protection fld 9/18/18**

Docket 35

\*\*\* VACATED \*\*\* REASON: Stip for adequate protection entered on  
9/19/18 [doc. 56]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

James Lamont Dubose

Represented By  
Stephen L Burton

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11900 Maryam Hadizadeh**

**Chapter 7**

**#3.00** Motion for relief from stay [AN]

MONA SOLEIMANI AND DANNY PAVEHZADEH  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Apparently, the validity of the quitclaim deed at issue is being challenged, and that dispute is pending before the state court. What is the status of the movants' preparation to try this matter in state court? Would it be possible for this Court to adjudicate that issue in or before December 2018?

If this Court grants relief from the automatic stay for the state court to determine only this issue, *i.e.*, the validity of the quitclaim deed, why can't the chapter 7 trustee represent and litigate the interest of the debtor's bankruptcy estate in the real property (if any) in the state court?

In light of the expense of litigating this issue, are the movants and the chapter 7 trustee willing to participate in the Court's mediation program, in an attempt to resolve this dispute consensually?

**Party Information**

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12049 Ani Z Kessedjian**

**Chapter 7**

**#4.00 Motion for relief from stay [RP]**

US BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 20

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Ani Z Kessedjian

Represented By  
Stephen L Burton

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Ani Z Kessedjian**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 10, 2018

Hearing Room 301

9:30 AM

1:18-10982 Gabriel Medina

Chapter 13

#5.00 Motion for relief from stay [RP]

STRUNZO DEVELOPMENT CORPORATION  
VS  
DEBTOR

Docket 66

**Tentative Ruling:**

**I. BACKGROUND**

On April 19, 2018, Gabriel Medina ("Debtor") filed a voluntary chapter 13 petition. Debtor owns the real property located at 15143 Polk Street, Sylmar, CA 91342 (the "Property").

On May 3, 2013, Strunzo Development Corporation ("Movant") funded a purchase money loan to Edge Holdings Company LLC ("Edge") in the principal amount of \$165,000 [Declaration of Pasquale P Caiazza ("Caiazza Decl."), ¶ 4]. The loan was evidenced by a note [doc. 66, Exh. A] and deed of trust executed by Edge as the borrower and Movant as the lender ("Movant's Deed of Trust") [doc. 66, Exh. B]. Movant's Deed of Trust was signed by Michael Herrera, as manager for Edge. On May 28, 2013, Movant's Deed of Trust was recorded.

On May 7, 2015, Debtor filed a state court action to quiet title to the Property [doc. 72, Exh. D]. On October 5, 2016, the state court entered judgment (the "Judgment") in favor of Debtor and against numerous defendants, including Herrera and Edge [doc. 72, Exh. C]. Furthermore, the state court ordered that Debtor was the owner in fee simple of the Property, free and clear of any interest, claim, or lien of any of the defendants in that action or of anyone claiming an interest in the Property adverse to Debtor's rights thereto *excluding liens of non defendant parties* (emphasis added) [Judgment, p. 3, lines 15-18]. The state court awarded Debtor approximately \$497,982.07 in damages.

Pursuant to the terms of the loan, Edge was to tender payments to Movant in the amount of \$1,447.99 per month, commencing June 15, 2013, until May 15, 2043

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

[Caiazza Decl., ¶ 5]. According to Movant, the loan was current until August 2018 when Edge defaulted on the monthly payment [*Id.*, at ¶ 6].

On September 15, 2018, Movant filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") [doc. 66]. On September 21, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 70]. On October 3, 2018, Movant filed a reply to the opposition (the "Reply") [doc. 71] and a request for judicial notice [doc. 72].

In the Opposition, Debtor denies involvement with Movant's Deed of Trust and contends that he does not have personal liability for Movant's Deed of Trust. Debtor further contends that Movant's lien against the Property is void.

## **II. DISCUSSION**

### ***A. Request for Judicial Notice***

As an initial matter, the Court grants Movant's request for judicial notice [doc. 72]. Pursuant to Federal Rule of Evidence 201(b)(2), a court may judicially notice a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." A court may also take judicial notice of "facts which are a matter of public record." *Tal v. Hogan*, 453 F.3d 1244, 1265 (10th Cir. 2006). Accordingly, the Court will take judicial notice of the specific documents identified in the request for judicial notice, as matters of public record.

### ***B. 11 U.S.C. § 362(d)(1)***

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . for cause, including the lack of adequate protection of an interest in property of such party in interest . . .". 11 U.S.C. § 362(d)(1).

Debtor argues that the Motion should be denied because, pursuant to the Judgment, "any and all Deeds executed or recorded by any of the Defendants . . . , regarding the 'Subject Property,' . . . are null and void . . ." However, the next paragraph in the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Gabriel Medina**

**Chapter 13**

Judgment states that Debtor "is the owner in fee simple of the Subject Property, free and clear of any interest, claim or lien" of any of the named defendants "or of anyone claiming an interest in the Property adverse to [Debtor]'s rights thereto *excluding liens of non defendant parties.*

Movant, which is the beneficiary of a deed of trust, was not named as a defendant in the quiet title action. As such, Movant may have a valid lien against the Property.

**C. CONCLUSION**

In light of the forgoing, Debtor's counsel should be prepared to address the issues raised in the Reply, *i.e.*, regarding the specific language in the Judgment and the effect of Debtor's failure to include Movant as a party to the quiet title action.

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

**Debtor(s):**

Gabriel Medina

Represented By

Anthony Obehi Egbase

Sedoo Manu

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10880 LaFaye Francisco**

**Chapter 13**

**#6.00** Motion for relief from stay [RP]

HSBC BANK USA  
VS  
DEBTOR

Docket 35

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

LaFaye Francisco

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12267 Sara Banuelos**

**Chapter 13**

**#7.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 8

**Tentative Ruling:**

Deny. The debtor's prior chapter 13 bankruptcy case was pending and dismissed on September 4, 2018, within one year before the filing of this case. The debtor filed the pending case on September 7, 2018. The hearing on this motion to continue the automatic stay under 11 U.S.C. § 362(c)(3)(B) was not completed within 30 days after the filing of this case. Accordingly, the Court cannot grant the debtor's motion.

The Court will prepare the order.

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

**Debtor(s):**

Sara Banuelos

Represented By  
Bernal P Ojeda

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11936 Jose Luis Gonzalez**

**Chapter 13**

**#7.10** Motion for reconsideration and to vacate order upon debtor's emergency motion to continue the automatic stay

Docket 37

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jose Luis Gonzalez

Represented By  
Edmond Richard McGuire

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

1:30 PM

**1:11-11603 Kevan Harry Gilman**

**Chapter 7**

**#8.00** Status conference re: remand

from: 6/13/18; 6/17/18

Docket 577

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on November 7, 2018**, to be held with the hearings on the parties' discovery motions [docs. 604, 617].

Appearances are excused on October 10, 2018.

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

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

1:30 PM

**1:13-11215 Cindy M Montano**

**Chapter 7**

Adv#: 1:17-01111 Melendrez v. Montano

**#9.00** Status conference re complaint for determination  
of the dischargeability of a claim

from: 2/14/18; 8/22/18; 9/5/18

Docket 1

**Tentative Ruling:**

What is the status of the parties' participation in mediation?

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

**Debtor(s):**

Cindy M Montano	Pro Se
-----------------	--------

**Defendant(s):**

Cindy M Montano	Pro Se
-----------------	--------

**Plaintiff(s):**

Antonio Melendrez	Represented By Michael J Armenta
-------------------	-------------------------------------

**Trustee(s):**

Amy L Goldman (TR)	Pro Se
--------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 10, 2018

Hearing Room 301

1:30 PM

**1:16-10543 Dean Albert Maury Cazares**

**Chapter 7**

Adv#: 1:18-01088 Cazares v. Weil

**#10.00** Status conference re: complaint for declaratory relief that certain post petition earnings are not property of the bankruptcy estate

**Notice of voluntary dismissal filed 9/25/18**

Docket 1

\*\*\* VACATED \*\*\* REASON: Order dismissing adversary entered 9/28/18 [doc. 8].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dean Albert Maury Cazares

Represented By  
Andrew Edward Smyth  
Stephen S Smyth

**Defendant(s):**

Diane C. Weil

Pro Se

**Plaintiff(s):**

Dean Albert Maury Cazares

Represented By  
Andrew Edward Smyth

**Trustee(s):**

Diane C Weil (TR)

Represented By  
C John M Melissinos

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10123 Fred Horiat**

**Chapter 7**

Adv#: 1:18-01042 Ingram v. Horiat

**#11.00** Order to Show Cause Why This Adversary Proceeding Should  
Not Be Dismissed For Failure To Prosecute

Docket 17

**Tentative Ruling:**

In light of the declaration of David L. Ingram [doc. 21], timely filed in response to the Order to Show Cause on September 26, 2018, the Court will discharge the Order to Show Cause.

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

**Debtor(s):**

Fred Horiat

Represented By  
David S Hagen

**Defendant(s):**

Fred Horiat

Represented By  
David S Hagen

**Plaintiff(s):**

David Ingram

Represented By  
David L Ingram

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10123 Fred Horiat**

**Chapter 7**

Adv#: 1:18-01042 Ingram v. Horiat

**#12.00** Status conference re: complaint to determine dischargability of debt (11 U.S.C. §523(a)(5) and (a)(15)

fr. 6/20/18; 9/5/18

Docket 1

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/17/18.

Deadline to file pretrial motions: 1/17/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/6/19.

Pretrial: 1:30 p.m. on 2/20/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 10, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Fred Horiat**

**Chapter 7**

**Debtor(s):**

Fred Horiat

Represented By  
David S Hagen

**Defendant(s):**

Fred Horiat

Pro Se

**Plaintiff(s):**

David Ingram

Represented By  
David L Ingram

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, October 11, 2018

Hearing Room 301

1:00 PM

1:14-13456 **Ginkgo Rose Ltd.**

**Chapter 11**

**#1.00** Motion for order to show cause why: (1) Debtor Ginkgo Rose Ltd. and its majority owners Barbara and David Darwish should not be held in contempt of the September 10, 2014 order to produce documents in connection with their 2004 examinations; and (2) Third party Ruth Zakowski should not be held in contempt of the order dated December 22, 2014 to appear for 2004 exam and produce documents

fr; 2/19/15; 2/25/15; 3/19/15; 4/23/15; 7/23/15; 1/21/16; 5/5/16; 1/12/17; 7/13/17; 10/19/17; 4/12/18

Docket 214

**Tentative Ruling:**

The Court will continue this hearing to **1:00 p.m. on April 11, 2019.**

Appearances are excused on October 11, 2018.

**Party Information**

**Debtor(s):**

Ginkgo Rose Ltd.

Represented By  
Alan W Forsley  
Marc A Lieberman  
Stephen E Ensberg Esq

**Movant(s):**

Ernest Johnson

Represented By  
Dennis P Riley

Carlos Rodriguez

Represented By  
Dennis P Riley

Dennis Goldson

Represented By  
Dennis P Riley

Wayne Hart

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Gingko Rose Ltd.**

**Chapter 11**

	Dennis P Riley
Esmeralda Hernandez	Represented By Dennis P Riley
Jack Vaughn	Represented By Dennis P Riley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#2.00** Status conference re chapter 11 case

fr. 9/11/14; 12/4/14; 12/11/14; 12/23/14; 3/5/15; 3/19/15;  
4/23/15; 7/23/15; 1/21/16; 5/5/16; 1/12/17; 7/13/17;  
10/19/17; 4/12/18

Docket 1

**Tentative Ruling:**

The Court will continue this hearing to **1:00 p.m. on April 11, 2019.**

The debtor in possession or any appointed chapter 11 trustee must file an updated status report, to be served on the debtor's 20 largest unsecured creditors and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

Appearances are excused on October 11, 2018.

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

**Debtor(s):**

Gingko Rose Ltd.

Represented By  
Alan W Forsley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#3.00** Confirmation hearing re amended chapter 11 plan of reorganization

Docket 118

**Tentative Ruling:**

**If the debtor demonstrates that he is current on his payment of fees due to the United States Trustee, confirm Individual Debtor's Amended Chapter 11 Plan of Reorganization [doc. 118]. No later than **March 28, 2019**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **April 11, 2019 at 1:00 p.m.****

The debtor must submit the confirmation order within seven (7) days.

**Party Information**

**Debtor(s):**

Ikechukwu Mgbeke

Represented By

Anthony Obehi Egbase

Clarissa D Cu

Crystle Jane Lindsey

W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#4.00 Status conference re chapter 11 case**

fr. 6/22/17; 7/6/17; 7/13/17; 8/10/17; 9/21/17; 10/5/17;  
12/21/17; 2/8/18; 3/29/18; 6/7/18; 8/2/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle J Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 5/17/18; 6/7/18

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to **October 18, 2018 at 1:00 p.m.**, to be held in connection with the chapter 11 case status conference of Integrated Dynamics Solutions, Inc.

Appearances on October 11, 2018 are excused.

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 6/21/18

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to **November 15, 2018 at 1:00 p.m.**, to be held following the continued hearing on the motion to value the debtor's real property [*see* doc. 67].

Appearances on October 11, 2018 are excused.

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

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

Docket 1

**Tentative Ruling:**

Contrary to the Court's order [doc. 21], the debtor has not included a budget of the debtor's projected income, expenses and cash flow for the first six months of this case on a month to month basis. In addition, the debtor did not attach the exhibits identified in the Declaration of Ronald Alcazar [doc. 39]. In light of this omission, the debtor also has not provided evidence regarding the debtor's actual income, expenses and cash flow for the last six months preceding the filing of this case on a month to month basis. The debtor must file a supplemental declaration including this information.

The parties should address the following:

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **January 31, 2019.**

Continued chapter 11 case status conference to be held at **2:00 p.m. on December 6, 2018.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **10 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

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

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
M. Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Mr. Tortilla, Inc.**

Roksana D. Moradi-Brovia

**Chapter 11**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#8.00** Status conference re chapter 11 case

Docket 1

**\*\*\* VACATED \*\*\* REASON: Continued to 10/18/18 at 1:00 p.m. per order**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 11, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#9.00** Debtor's motion to avoid judgment lien held by Citibank (South Dakota) N.A. under 11 U.S.C. §522(f) or alternatively § 506(a), (d)

Docket 206

**\*\*\* VACATED \*\*\* REASON: Set in error.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, October 11, 2018

Hearing Room 301

2:00 PM

1:18-11342 Victory Entertainment Inc

Chapter 11

#10.00 Motion for resolution of U.S. Trustee's report of disputed election of the chapter 11 trustee

Docket 99

\*\*\* VACATED \*\*\* REASON: Order denying motion as moot entered 10/9/18. [Dkt#119]

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Russell Clementson  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 16, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12032 Mark Feigin**

**Chapter 7**

**#1.00** Reaffirmation agreement between debtor and Harley-Davidson Credit Corp

Docket 12

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

**Debtor(s):**

Mark Feigin

Pro Se

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, October 16, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12114 Dayananda Lekamlage**

**Chapter 7**

**#2.00** Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

Docket 8

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

**Debtor(s):**

Dayananda Lekamlage

Pro Se

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:16-10470 Steven William Tam and Boriana Blagoeva Tam

Chapter 13

#1.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION  
VS  
DEBTOR

fr. 9/12/2018;

Docket 39

\*\*\* VACATED \*\*\* REASON: On September 19, 2018, the Court entered an order dismissing the case [doc. 45]. The motion is moot.

**Tentative Ruling:**

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

**Debtor(s):**

Steven William Tam

Represented By  
Gregory M Shanfeld

**Joint Debtor(s):**

Boriana Blagoeva Tam

Represented By  
Gregory M Shanfeld

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:14-15332 Ruben Adrian Murguia**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

US BANK TRUST N.A.  
VS  
DEBTOR

fr. 8/22/18; 9/5/18

Docket 38

**Tentative Ruling:**

**Tentative Ruling from 8/22/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Ruben Adrian Murguia**

**Chapter 13**

**Debtor(s):**

Ruben Adrian Murguia

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12280 Stacy Reynolds**

**Chapter 13**

**#2.10** Motion for relief from stay [RP]

WILLIAM BIGELSON

fr. 10/3/18

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Upon entry of the 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).

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Stacy Reynolds**

**Chapter 13**

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

**Debtor(s):**

Stacy Reynolds

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11444 Orlando Huete**

**Chapter 13**

**#2.20** Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 10/3/18

Docket 20

**\*\*\* VACATED \*\*\* REASON: The bankruptcy case was dismissed on  
10/9/18. The motion is moot.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Orlando Huete

Represented By  
Jaime A Cuevas

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:15-13626 Dwayne Rice Corbitt

Chapter 13

#2.30 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 9/12/18; 10/3/18

Docket 103

**Tentative Ruling:**

**Tentative Ruling from 9/12/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Dwayne Rice Corbitt**

**Chapter 13**

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:18-11900 Maryam Hadizadeh

Chapter 7

#2.40 Motion for relief from stay [AN]

MONA SOLEIMANI AND DANNY PAVEHZADEH  
VS  
DEBTOR

fr. 10/10/18

Docket 15

**Tentative Ruling:**

**Tentative Ruling From 10/10/18**

Apparently, the validity of the quitclaim deed at issue is being challenged, and that dispute is pending before the state court. What is the status of the movants' preparation to try this matter in state court? Would it be possible for this Court to adjudicate that issue in or before December 2018?

If this Court grants relief from the automatic stay for the state court to determine only this issue, *i.e.*, the validity of the quitclaim deed, why can't the chapter 7 trustee represent and litigate the interest of the debtor's bankruptcy estate in the real property (if any) in the state court?

In light of the expense of litigating this issue, are the movants and the chapter 7 trustee willing to participate in the Court's mediation program, in an attempt to resolve this dispute consensually?

**Party Information**

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Maryam Hadizadeh**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11983 Filiberto Contreras and Miriam Contreras**

**Chapter 7**

**#3.00 Motion for relief from stay [PP]**

TOYOTA MOTOR CREDIT COORPORATION  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Filiberto Contreras

Represented By  
Daniel King

**Joint Debtor(s):**

Miriam Contreras

Represented By  
Daniel King



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Filiberto Contreras and Miriam Contreras**

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:18-11809 Louiza Stephany Akopyan

Chapter 7

#4.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Louiza Stephany Akopyan

Represented By  
Navid Kohan

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Louiza Stephany Akopyan**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11827 Vartan Grigoryan**

**Chapter 7**

**#5.00** Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA  
VS  
DEBTOR

Docket 12

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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

**Debtor(s):**

Vartan Grigoryan

Represented By  
Anita Khachikyan

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Vartan Grigoryan**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10747 Alvin Isidro**

**Chapter 13**

**#6.00** Motion for relief from stay [PP]

WELLS FARGO BANK NA  
VS  
DEBTOR

Docket 49

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Alvin Isidro

Represented By  
Robert M Aronson

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Alvin Isidro**

**Chapter 13**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11333 Gayane Torosyan**

**Chapter 13**

**#7.00 Motion for relief from stay [RP]**

AMERIHOM MORTGAGE COMPANY, LLC  
VS  
DEBTOR

Docket 17

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Gayane Torosyan

Represented By  
Scott Kosner

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Gayane Torosyan**

**Chapter 13**

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:18-12280 Stacy Reynolds

Chapter 13

#8.00 Motion for relief from stay [RP]

WILLIAM BIGELSON  
VS  
DEBTOR

Docket 7

\*\*\* VACATED \*\*\* REASON: Duplicate-See calendar #2.1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Stacy Reynolds

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, October 17, 2018

Hearing Room 301

9:30 AM

1:18-11801 Rudex Broadcasting Limited Corp.

Chapter 11

#9.00 Motion for relief from stay [RP]

BUDGET FINANCE COMPANY  
VS  
DEBTOR

Docket 36

\*\*\* VACATED \*\*\* REASON: withdrawal of motion filed on 10/5/18 doc  
#43

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Rudex Broadcasting Limited Corp.

Represented By  
Michael D Kwasigroch  
Michael S Kogan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#10.00** Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

fr. 1/10/18; 1/24/18, 6/6/18; 6/20/18

Docket 1

**Tentative Ruling:**

On August 30, 2018, the debtor filed a motion for the Court to approve a settlement agreement between the debtor and the plaintiff [Bankruptcy Docket, doc. 310]. On September 28, 2018, the Court entered an order approving the parties' agreement [Bankruptcy Docket, doc. 326]. In the agreement, the parties agreed that the plaintiff will file a stipulation for entry of judgment, and that, upon entry of judgment, this adversary proceeding will be dismissed. When does the plaintiff intend to file a stipulation for entry of judgment?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#11.00** Order to show cause why defendant Robin Dimaggio's answer should not be stricken fro failure to appear

Docket 49

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#12.00** Motion to compel further responses to requests for production of documents, interrogatories and request for admissions

[Re: Request for Admissions]

fr. 8/1/18; 9/5/18

Docket 26

**Tentative Ruling:**

**I. BACKGROUND**

On August 1, 2018, the Court held a hearing on the motion to compel (the "Motion") [doc. 26] filed by Forum Entertainment Group, Inc. ("Plaintiff"). At that time, the Court ruled on Plaintiff's request to compel further responses to Plaintiff's propounded interrogatories and requests for production (the "Ruling") [doc. 33]. The Court continued the hearing to issue a ruling on Plaintiff's request to compel further responses to Plaintiff's propounded requests for admission. On August 21, 2018, the Court entered an order on the Motion [doc. 39].

On August 7, 2018, Robin DiMaggio ("Defendant") filed a response to the Motion (the "Response") [doc. 35]. Defendant attached his amended responses to Plaintiffs' discovery requests to the Response. As Defendant has now provided amended responses, the Court will evaluate Plaintiffs' request to compel further responses to their requests for admission ("RFAs") by reference to the amended responses.

**II. ANALYSIS**

Pursuant to Federal Rule of Civil Procedure ("Rule") 36(a)(4)—

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

1:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

***A. RFA nos. 2 and 81 and RFA nos. 1, 4, 61, 67, 70, 73, 79 and 109-110***

In his amended response to the RFAs, Defendant states "yes" in response to RFA nos. 2 and 81. As such, the Court will deem RFA nos. 2 and 81 admitted. Moreover, in his amended responses, Defendant states "no" in response to RFA nos. 1, 4, 61, 67, 70, 73, 79 and 109-110. As such, the Court will deem RFAs nos. 1, 4, 61, 67, 70, 73, 79 and 109-110 denied. Defendant does not have to provide further response to these RFAs.

***B. RFA no. 3***

In response to RFA no. 3, Defendant states, "with the help of Steve Yu." It is unclear if this response is an admission or a denial. Defendant must respond by stating either "admit" or "deny," and after admitting or denying the request, Defendant may qualify his answer by adding "with the help of Steve Yu."

***C. RFA nos. 5-6, 8-11, 36 and 47***

In response to RFA nos. 5-6, 8-11, 36 and 47, Defendant states that he cannot recall and, in response to some of the requests, asserts that he cannot remember because he has been taking too much medication. These responses are insufficient. Defendant cannot simply state that he cannot recall matters; he must indicate whether he attempted to learn the information and how he attempted to recover the information before stating he cannot recall. *See, e.g. Attali v. City of New York*, 2017 WL 3268212, at \*3 (S.D.N.Y. Aug. 1, 2017); and *Jacobs v. Scribner*, 2009 WL 3614567, at \*1 (E.D. Cal. Oct. 28, 2009). Defendant must provide additional information regarding whether he attempted to remember the information, and how.

***D. RFA nos. 12-13, 16-17, 19, 21-22, 54, 60, 66, 75, 77-78, 80 and 108***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

In response to RFA nos. 12-13, 16-17, 19, 21-22, 54, 60, 66, 75, 77-78, 80 and 108, Defendant instructs Plaintiffs to ask Steve Yu, but does not admit or deny the matter. These responses are insufficient under Rule 36(a)(4). Defendant must respond with a clear "admit" or "deny," or, if Defendant cannot admit or deny, Defendant must state, in detail, why he cannot admit or deny the matter. For example, if Defendant does not know enough to admit or deny a request, Defendant may state that he lacks knowledge. If Defendant states that he lacks knowledge, Defendant must show the Court that he attempted to obtain the answer. As such, Defendant must provide Plaintiff amended responses to these RFAs.

***E. RFA no. 14***

RFA no. 14 asks Defendant to admit or deny that Will.I.Am and Pitbull did not perform at the concert. In response to RFA no. 14, Defendant states that the "concert never happened because Calvin Lau hired to[o] many people." Defendant's response implies that Defendant admits RFA no. 14. Nevertheless, Defendant should amend his response to clearly state either "admit" or "deny" in response to RFA no. 14.

***F. RFA nos. 15, 18, 25-32, 34, 37-38, 40-46, 49, 50-53, 55, 58-59, 62-65, 68-69, 71-72, 74 and 76***

In response to RFA no. 15, Defendant states, "Steve Yu failed." In response to RFA nos. 18, 49, 53, 59, 62-65, 68-69, 71-72, 74 and 76, Defendant states that Steve Yu has the materials or funds to which Plaintiff refers. In addition, in response to RFA nos. 25-32, 37-38, 40-46 and 50-52, Defendant states that Steve Yu handled the matters at issue. In response to RFA no. 34, Defendant states that Steve Yu made the statement to which Plaintiff refers. Finally, in response to RFA no. 55 and 58, Defendant states that Steve Yu took the money at issue and should have returned the funds. Defendant's responses to all of these RFAs are insufficient under Rule 36(a)(4). Defendant must respond to each of these requests by clearly admitting or denying the matters. If Defendant believes he did not commit the acts contained in the RFAs, and that a third party, such as Steve Yu, committed those acts, Defendant must respond with a denial.

***G. RFA nos. 20, 23 and 24***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

In response to RFA nos. 20, 23 and 24, Defendant states that he was on television every night with the band to which Plaintiff refers. The requests ask Defendant if he provided a check to the band members or if Defendant attempted to secure the band for the concert. Defendant's answers are not responsive to these RFAs. Defendant must respond by clearly stating "admit" or "deny" in response to these requests.

***H. RFA nos. 35 and 111***

In response to RFA nos. 35 and 111, Defendant answers "yes and no." Defendant must specify if he is admitting or denying the matters. If Defendant is admitting one part of the statement, but denying another part of the statement, Defendant must clearly state which part of the statement he admits and which part he denies.

***I. RFA no. 39***

In response to RFA no. 39, which asks Defendant to admit or deny if he contacted Don Felder for the concert, Defendant responded, "I produced both his records I think this question is invalid." This response is insufficient under Rule 36(a)(4). Defendant must state either "admit" or "deny" in response to this RFA. If Defendant cannot admit or deny, Defendant must explain, in detail, why he is unable to admit or deny.

***J. RFA nos. 56-57***

In response to RFA nos. 56-57, Defendant states, "Thank God!" These responses are neither admissions or denials and do not comply with Rule 36(a)(4). Defendant must respond to these requests by stating either "admit" or "deny." If Defendant cannot admit or deny, Defendant must explain, in detail, why he is unable to admit or deny.

***K. RFA nos. 82-83***

In response to RFA nos. 82-83, Defendant states that his bankruptcy attorney was supposed to list certain debts in his schedules. This is not responsive to the requests. Defendant must respond to these requests by either admitting or denying the statements. If Defendant cannot admit or deny the statements, Defendant must explain, in detail, why he is unable to admit or deny the statements.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

1:30 PM

CONT... Robin DiMaggio

Chapter 7

***L. RFA no. 84***

RFA no. 84 asks Defendant to admit that he does not have any documents to support his first affirmative defense from the answer Defendant filed on January 26, 2018 (the "**Answer to Complaint**") [doc. 10], through which Defendant states that Plaintiff cannot prove its allegations. In response to RFA no. 84, Defendant states, "It needs to be discharged, Forum was the epic cause of the chaos." This is not responsive. If Defendant has any documents showing that Plaintiff cannot prove its allegations, Defendant must respond by stating "deny" and must provide those documents to Plaintiff. If Defendant does not have any such documents, Defendant must respond by stating "admit."

***M. RFA no. 112***

Defendant has not provided any response to RFA no. 112. Defendant must provide a response to this request.

***N. RFA nos. 7, 33 and 85-107***

With respect to RFA nos. 7, 33 and 85-107, Defendant states he does not understand the requests. The Court will explain the requests to Defendant below, and Defendant must provide responses to the requests after reading the Court's explanations by clearly stating if he admits the statements or denies the statements.

***a. RFA no. 7***

RFA no. 7 asks Defendant if he signed or otherwise agreed to a document titled "Memorandum of Understanding," through which Defendant agreed to hire performers for the concert. Does Defendant remember signing or agreeing to this document? If so, Defendant must state if he admits to executing the document or denies executing the document.

***b. RFA no. 33***

RFA no. 33 asks Defendant if he knows anyone who spoke to either Will.I.Am or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Pitbull about the concert when Plaintiff paid Defendant \$15,000 in brokering fees. If Defendant does know anyone who spoke to these artists about the concert, Defendant must respond by stating "admit." If Defendant does not know anyone who spoke to these artists about the concert, Defendant may respond stating "deny."

*c. RFA no. 96*

In the Answer to Complaint, Defendant states that Plaintiff cannot prove its allegations from the complaint. If Defendant can explain, in detail, why Defendant believes Plaintiff cannot prove the allegations in the complaint, Defendant may deny RFA no. 96. If Defendant cannot explain why he believes Plaintiff cannot prove the allegations, Defendant must admit to RFA no. 96.

*d. RFA nos. 85 and 97*

In the Answer to Complaint, Defendant states that Defendant has incurred damages from Plaintiff's conduct. What has Plaintiff done to damage Defendant? How much money, if any, does Defendant believe Plaintiff owes Defendant? If Defendant can answer these questions, Defendant may deny RFA no. 97. If Defendant cannot answer these questions, Defendant must admit to RFA no. 97.

As for RFA no. 85, does Defendant have any documents that show that Plaintiff has injured Defendant or that Plaintiff owes Defendant any money? If so, Defendant must deny the RFA and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to the RFA.

*e. RFA nos. 86 and 98*

In the Answer to Complaint, Defendant states that Plaintiff has waived its claims, meaning that Plaintiff has done something that would prevent Plaintiff from suing Defendant. What does Defendant believe Plaintiff has done that would result in Plaintiff being unable to sue Defendant? If Defendant can answer this question, Defendant may deny RFA no. 98. If Defendant cannot answer this question, Defendant must admit to RFA no. 98.

As for RFA no. 86, does Defendant have any documents that demonstrate that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Plaintiff has done something to prevent Plaintiff from suing Defendant? If so, Defendant must deny RFA no. 86 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 86.

***f. RFA nos. 87 and 99***

In the Answer to Complaint, Defendant states that Plaintiff has breached an agreement with Defendant. Defendant also alleges that Plaintiff has engaged in "tortious conduct" and "unclean hands" and that "laches" bars Plaintiff from suing Defendant. Which agreement does Defendant believe Plaintiff breached? Regarding Defendant's allegation that Plaintiff committed "tortious conduct" and that Plaintiff has "unclean hands," what does Defendant believe Plaintiff did that was wrong? As to "laches," does Defendant believe Plaintiff waited too long to sue Defendant? If so, why? If Defendant can answer these questions, Defendant may deny RFA no. 99. If Defendant cannot answer these questions, Defendant must admit to RFA no. 99.

As for RFA no. 87, does Defendant have any documents that demonstrate that Plaintiff has breached an agreement, committed any wrongful act or filed its complaint too late? If so, Defendant must deny RFA no. 87 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 87.

***g. RFA nos. 88 and 100***

In the Answer to Complaint, Defendant states that Plaintiff has breached a contract. Which agreement does Defendant believe Plaintiff breached? How did Plaintiff breach this agreement? If Defendant can answer these questions, Defendant may deny RFA no. 100. If Defendant cannot answer these questions, Defendant must admit to RFA no. 100.

As for RFA no. 88, does Defendant have any documents that would show that Plaintiff breached a contract? If so, Defendant must deny RFA no. 88 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 88.

***h. RFA nos. 89 and 101***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

In the Answer to Complaint, Defendant states that Plaintiff has released Defendant of any liability. In other words, Defendant is asserting that Plaintiff did or said something to excuse Defendant from repaying Plaintiff. What did Plaintiff do or say to excuse Defendant from being liable to Plaintiff? If Defendant can answer this question, Defendant may deny RFA no. 101. If Defendant cannot answer this question, Defendant must admit to RFA no. 101.

As for RFA no. 89, does Defendant have any documents that would show what Plaintiff did or said? If so, Defendant must deny RFA no. 89 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 89.

***i. RFA nos. 90 and 102***

In the Answer to Complaint, Defendant states that Plaintiff is as responsible for the allegations in the complaint as Defendant. What does Defendant believe Plaintiff did or said that caused Plaintiff to lose money? If Defendant can answer this question, Defendant may deny RFA no. 102. If Defendant cannot answer this question, Defendant must admit to RFA no. 102.

As for RFA no. 90, does Defendant have any documents that show what Plaintiff did or said that caused any of the allegations from the complaint, such as Plaintiff's loss of money, the concert not going forward or the lack of confirmation to perform from the musical artists? If so, Defendant must deny RFA no. 90 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 90.

***j. RFA nos. 91 and 103***

In the Answer to Complaint, Defendant states that Plaintiff did or said things, or failed to do or say things, that injured Defendant. What did Plaintiff do or say, or fail to do or say, that harmed Defendant? If Defendant can answer this question, Defendant may deny RFA no. 103. If Defendant cannot answer this question, Defendant must admit to RFA no. 103.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

As for RFA no. 91, does Defendant have any documents that show what Plaintiff did or said and how Defendant was harmed? If so, Defendant must deny RFA no. 91 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 91.

***k. RFA nos. 92 and 104***

In the Answer to Complaint, Defendant states that Defendant fully performed under the parties' agreement. How does Defendant believe he fully performed in accordance with the parties' agreement(s)? If Defendant can answer this question, Defendant may deny RFA no. 104. If Defendant cannot answer this question, Defendant must admit to RFA no. 104.

As for RFA no. 92, does Defendant have any documents that show that Defendant did everything he was supposed to do under the parties' contract(s)? If so, Defendant must deny RFA no. 92 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 92.

***l. RFA nos. 93 and 105***

In the Answer to Complaint, Defendant states that Plaintiff did things, or failed to do things, to minimize the amount of money Plaintiff lost. What does Defendant believe Plaintiff should have done differently to reduce the amount of money Plaintiff lost? If Defendant can answer this question, Defendant may deny RFA no. 105. If Defendant cannot answer this question, Defendant must admit to RFA no. 105.

As for RFA no. 93, does Defendant have any documents that indicate what Plaintiff should have done differently to decrease Plaintiff's damages? If so, Defendant must deny RFA no. 93 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 93.

***m. RFA nos. 94 and 106***

In the Answer to Complaint, Defendant states that Plaintiff was not reasonable in believing what Defendant told Plaintiff. Why does Defendant believe Plaintiff should not have believed what Defendant told Plaintiff? If Defendant can answer this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

question, Defendant may deny RFA no. 106. If Defendant cannot answer this question, Defendant must admit to RFA no. 106.

As for RFA no. 94, does Defendant have any documents that show why Plaintiff relying on Defendant was unreasonable? If so, Defendant must deny RFA no. 94 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 94.

***n. RFA nos. 95 and 107***

In the Answer to Complaint, Defendant states that Plaintiff cannot sue Defendant because the complaint is untimely. Given that Plaintiff alleges in the complaint that Plaintiff first sued Defendant on September 6, 2013, that is, within a year of the concert not going forward, why does Defendant believe that Plaintiff's claims are untimely under the listed statutes, which require that complaints be filed between two and four years from the alleged wrongful conduct? If Defendant can answer this question, Defendant may deny RFA no. 107. If Defendant cannot answer this question, Defendant must admit to RFA no. 107.

As for RFA no. 95, does Defendant have any documents showing that Plaintiff's complaint is untimely? If so, Defendant must deny RFA no. 95 and provide the documents to Plaintiff. If Defendant does not have any documents, Defendant must admit to RFA no. 95.

**III. CONCLUSION**

The Court will compel Defendant to respond to each RFA in accordance with the Court's ruling above, no later than **14 days** after entry of the order.

Plaintiff must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#13.00** Status conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18; 8/8/18; 8/22/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

- #14.00** Pretrial conference re: complaint for:  
1. denial of debtor's discharge [11 U.S.C. § 727]  
2. determination that debt is non-dischargeable  
[11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 2/7/18

**Stip to continue filed 8/31/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 9/4/18 continuing hearing to  
11/14/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah

**#15.00** Order to show cause re: remand and status conference  
re removed proceeding

from: 6/6/18; 8/1/18

Docket 2

**Tentative Ruling:**

The Court will discharge this Order to Show Cause.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ali P Dargah

Represented By  
Kevin T Simon

**Defendant(s):**

Jeff Javad Dargah

Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah et al

- #16.00** Status conference re: first amended Complaint for:
- 1) Fraud
  - 2) Faud based on forgery;
  - 3) Civil conspiracy;
  - 4) Misconduct of neglect of notary public;
  - 5) Quit title;
  - 6) Cancellation of instrument;
  - 7) Slander of title;
  - 8) Declaratory relief;
  - 9) Injunctive relief

Docket 10

**Tentative Ruling:**

The proof of service filed by the plaintiff does not reflect service of the summons, notice of this status conference or status conference instructions. If the plaintiff timely served the summons and additional papers on all defendants, the plaintiff must file an amended proof of service attesting to such service.

If the plaintiff has not timely served the summons and the other required papers on all defendants, the plaintiff must request another summons. The plaintiff can obtain another summons from the Court by sending a request letter to Courtroom Services, Attn: Patty Garcia, 21041 Burbank Blvd., Woodland Hills, CA 91367.

The new summons must be served upon all defendants within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004 and Local Bankr. R. 7004-1(b). The plaintiff must attach to the alias summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the alias summons and the complaint and instructions to be served with that summons, the plaintiff must file a signed proof of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ali P Dargah**

**Chapter 13**

service indicating that another summons and the documents to be served with that summons were timely served on the defendants.

If plaintiff can obtain another summons from the Court by November 1, 2018, the status conference will be continued to **December 5, 2018 at 1:30 p.m.**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik

**Defendant(s):**

Jeff Javad Dargah	Pro Se
Jeff Javad Dargah, an individual	Pro Se
Gerakdune Granda an individual	Pro Se
The Bank of New York Mellon fka	Pro Se
Shahla Dowlati, an individual	Pro Se
All Persons or Entities Unknown	Pro Se
Does 1 to 10, Inclusive	Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik  
David M Kritzer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

Adv#: 1:18-01064 Justice Federal Credit Union v. Franckaert Mendoza

**#17.00** Status conference re: complaint to determine dischargeability of a debt

fr. 8/1/18

**Stipulated judgment filed 9/19/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulated judgment  
entered 9/24/18 [doc. 8].**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Francois E. Franckaert Mendoza

Represented By  
Elena Steers

**Defendant(s):**

Francois E. Franckaert Mendoza

Pro Se

**Plaintiff(s):**

Justice Federal Credit Union

Represented By  
Robert S Lampl

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01081      Albini et al v. Zuckerman

**#18.00**      Status conference re complaint to determine nondischargeability  
of debt pursuant to 11 U.S.C. §523(a)(2)(A)

fr. 10/3/18

Docket      1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:30 PM calendar**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Pro Se

**Plaintiff(s):**

Ronald Lapham

Represented By  
Edward McCutchan

Vito Lovero

Represented By  
Edward McCutchan

Frederick Mann

Represented By  
Edward McCutchan

Katherine Mann

Represented By  
Edward McCutchan

Jim Nord (Mein Trust)

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Evelina Dale Peritore	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Gary Ricioli	Represented By Edward McCutchan
Leon Sanders	Represented By Edward McCutchan
Mary Lou Schmidt	Represented By Edward McCutchan
Mark Schulte	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Richard Seversen	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
We Care Animal Rescue	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Nansi Weil	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan
Vern Fung	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel	Represented By Edward McCutchan
Carl (Eugene) Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Dale Barnes	Represented By Edward McCutchan
Ken Bowerman	Represented By Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Eileen Boyle	Represented By Edward McCutchan
Henry P Crigler	Represented By Edward McCutchan
Matthew Zdanek	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Henry Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Erhard York Trustee	Represented By Edward McCutchan
Louise Escher York	Represented By Edward McCutchan
Graham Gettemy	Represented By Edward McCutchan
Robert P Gilman	Represented By Edward McCutchan
John Hightower	Represented By Edward McCutchan
Bill Hing	Represented By Edward McCutchan
K Owyong Crigler	Represented By Edward McCutchan
Jim Nord (Patrick Family Trust)	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**  
Adv#: 1:18-01086 Abel v. Zuckerman et al

**Chapter 11**

- #19.00** Status conference re: adversary complaint for:
- 1) Declaratory and injunctive relief re: determination of validity, priority or extend of interest in property
  - 2) Declaratory and injunctive relief re: determination of validity, priority or extend of lien
  - 3) Turnover of property of the estate pursuant to 11 U.S.C. sec 542
  - 4) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A), 11 U.S.C. sec 523 (a)(2)(B), 11 U.S.C. sec 523 (a)(6) [28 U.S.C. sec 157(b)(2); F.R.B.P., R. 7001]

Docket 1

**\*\*\* VACATED \*\*\* REASON: Another summons issued - status hearing set for 11/14/2018 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
-------------------------	---

**Defendant(s):**

Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Zuckerman Building Company, a	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
San Jacinto Z, LLC, a California	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

Rezinate San Jacinto, LLC, a Pro Se

Maravilla Center, LLC, a California Pro Se

Sunderland/McCutchan, Inc., a Pro Se

Nickki B Allen, an individual Pro Se

DOES 1-20 Pro Se

**Plaintiff(s):**

Richard Abel Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11470 Asif Sheikh**

**Chapter 7**

Adv#: 1:18-01094 Karimzad v. Sheikh et al

**#20.00** Status conference re: complaint to determine dischargeability and in objection to discharge [11 U.S.C. sec 727(a)(4)(A); 523(a)(2)]

Docket 1

**Tentative Ruling:**

In their joint status report, the parties indicate that they would like to mediate this matter. The parties should be prepared to discuss their availability for mediation, whether they prefer mediating prior to the Court's adjudication of the defendants' motion to dismiss and whether the parties are willing to attend a global mediation with the parties involved in the related adversary proceeding entitled *Karimzad v. Sheik*, 1:18-ap-01096-VK.

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/14/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Asif Sheikh

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

CONT... Asif Sheikh

**Chapter 7**

Steven M Gluck

**Defendant(s):**

Asif Sheikh

Pro Se

Sajida Sheikh

Pro Se

**Joint Debtor(s):**

Sajida Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11471 Atif Sheikh**

**Chapter 7**

Adv#: 1:18-01096 Karimzad v. Sheikh et al

**#21.00** Status conference re: complaint to determine dischargeability  
and in objection to discharge  
[11 U.S.C. sec 727(a)(4)(A); 523(a)(2)]

Docket 1

**Tentative Ruling:**

In their joint status report, the parties indicate that they would like to mediate this matter. The parties should be prepared to discuss their availability for mediation, whether they prefer mediating prior to the Court's adjudication of the defendants' motion to dismiss and whether the parties are willing to attend a global mediation with the parties involved in the related adversary proceeding entitled *Karimzad v. Sheik*, 1:18-ap-01094-VK.

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/14/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Atif Sheikh

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

CONT...      **Atif Sheikh**

**Chapter 7**

Steven M Gluck

**Defendant(s):**

Atif Sheikh

Pro Se

Naureen Sheikh

Pro Se

**Joint Debtor(s):**

Naureen Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

1:30 PM

**1:18-11243 Jeff Davani**

**Chapter 7**

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Davani Bui

**#22.00** Status conference re: complaint objecting to discharge of debt under 11 U.S.C. sec 523(a)(2), (a)(4), and (a)(6)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Summons issued on First Amended  
Complaint 10/10/18. Status conference rescheduled for 12/5/18 at 1:30 PM.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeff Davani Pro Se

**Defendant(s):**

Jeff Davani an individual, doing Pro Se

Does 1 Through 50, Inclusive Pro Se

**Joint Debtor(s):**

Nadia Davani Pro Se

**Plaintiff(s):**

Yvonne Johnson Represented By  
Stephen M Sanders

**Trustee(s):**

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087      Liebling and June Liebling individually and on beh v. Goodrich et al

**#22.10**      Creditor's Motion to strike debtor's notice of removal and/or remand

fr. 9/12/18; 10/3/18

Docket      8

**Tentative Ruling:**

See calendar no. 22.20.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se
Peter Skarpas aka Peter Scarpas	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Mark Rudiger

Represented By  
Edward McCutchan

Elizabeth Ross on behalf of Betty P

Represented By  
Edward McCutchan

Cathy Ripple

Represented By  
Edward McCutchan

Dennis Ripple

Represented By  
Edward McCutchan

Gary Ricioili

Represented By  
Edward McCutchan

Justin Poeng

Represented By  
Edward McCutchan

Charlie Ray Moore

Represented By  
Edward McCutchan

Evelina Peritore

Represented By  
Edward McCutchan

Scott Page

Represented By  
Edward McCutchan

Nord Kerry L. Nord, individually

Represented By  
Edward McCutchan

Carey James

Represented By  
Edward McCutchan

Mireille M Moore

Represented By  
Edward McCutchan

John Milliken on behalf of We Care

Represented By  
Edward McCutchan

Jack Miller and Virginia Miller

Represented By  
Edward McCutchan

Dorothy Sanders

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan
Troy Winslow and Robin Winslow	Represented By Edward McCutchan
Mark D Shulte individually and on	Represented By Edward McCutchan
Henry T Crigler and Kathleen	Represented By Edward McCutchan
Francine Deering	Represented By Edward McCutchan
Gregge Vernon	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Louise Escher York, individually	Represented By Edward McCutchan
Amy Marshall	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Marvin Taylor Represented By  
Edward McCutchan

Jerry Strickler and Linda M. Represented By  
Edward McCutchan

Ryan Strickler Represented By  
Edward McCutchan

Donald Stewart Represented By  
Edward McCutchan

Walter Spiridonoff Represented By  
Edward McCutchan

Sandy Smith and Edward L. Smith Represented By  
Edward McCutchan

Lindy Sinclair Represented By  
Edward McCutchan

Richard Seversen individually and Represented By  
Edward McCutchan

Beverly J. Taylor Represented By  
Edward McCutchan

Patricia L Marshall Represented By  
Edward McCutchan

Steve Harvey Represented By  
Edward McCutchan

Fredric I Mann and Katherine Mann Represented By  
Edward McCutchan

Dale Davis Represented By  
Edward McCutchan

Henry T Crigler on behalf of the Represented By  
Edward McCutchan

James T Deering Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Dennis Cordellos	Represented By Edward McCutchan
John Cleary and Kathleen J. Cleary	Represented By Edward McCutchan
Eileen Boyle individually and on	Represented By Edward McCutchan
Ken Bowerman and Christine	Represented By Edward McCutchan
Gene Barnes	Represented By Edward McCutchan
Dale Barnes and Caroline Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Carl Barnes	Represented By Edward McCutchan
Randy Bailey	Represented By Edward McCutchan
Jackie Ann Albini	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel individually and on	Represented By Edward McCutchan
Richard Abel	Represented By Edward McCutchan
Hyam Liebling and June Liebling	Represented By Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Gary Dezorzi and Judith Dezorzi                      Represented By  
Edward McCutchan

Suki Ferl    Represented By  
Edward McCutchan

Jacinda Duval    Represented By  
Edward McCutchan

Graham H Gettemy individually and                      Represented By  
Edward McCutchan

Vito Lovero    Represented By  
Edward McCutchan

Vernon Larson    Represented By  
Edward McCutchan

Ronald P Lapham and Rosemary E.                      Represented By  
Edward McCutchan

Lillian Lapham    Represented By  
Edward McCutchan

Peter Kerston    Represented By  
Edward McCutchan

Glen Lane    Represented By  
Edward McCutchan

Pamela Lane    Represented By  
Edward McCutchan

Edward Keane    Represented By  
Edward McCutchan

Thomas B Marshall    Represented By  
Edward McCutchan

Gary Holbrook    Represented By  
Edward McCutchan

Bill Ong Hing and Lenora Verne                      Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Edward McCutchan

John Hightower and Polly Ann

Represented By  
Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087 Lieblich and June Lieblich individually and on beh v. Goodrich et al

**#22.20** Status Conference and Order to Show cause re remand

fr. 10/3/18

Docket 1

**Tentative Ruling:**

The parties should be prepared to discuss their availability for a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Albini et al v. Zuckerman* [1:18-ap-01081-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK].

**10/3/2018 Tentative:**

In light of the joint status report filed by the parties [doc. 25], in which the parties indicate their willingness to participate in the Court's mediation program, the Court will defer ruling on remand in order for the parties to be able to engage in mediation for a reasonable period of time before the Court determines the issue of remand.

Alternatively, if the parties would like to discuss the possibility of a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Albini et al v. Zuckerman* [1:18-ap-01081-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK], the Court will continue this status conference to **1:30 p.m. on November 14, 2018.**

If the parties in this adversary proceeding will commence mediation regarding *solely* this action (with the Court assessing that such a decision is well-founded), within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

**the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/21/18.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
-------------------------	---

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se
Peter Skarpas aka Peter Scarpas	Pro Se
Steven K. Talbot	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By Edward McCutchan
Mark Rudiger	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Elizabeth Ross on behalf of Betty P      Represented By  
Edward McCutchan

Cathy Ripple      Represented By  
Edward McCutchan

Dennis Ripple      Represented By  
Edward McCutchan

Gary Ricioili      Represented By  
Edward McCutchan

Justin Poeng      Represented By  
Edward McCutchan

Charlie Ray Moore      Represented By  
Edward McCutchan

Evelina Peritore      Represented By  
Edward McCutchan

Scott Page      Represented By  
Edward McCutchan

Nord Kerry L. Nord, individually      Represented By  
Edward McCutchan

Carey James      Represented By  
Edward McCutchan

Mireille M Moore      Represented By  
Edward McCutchan

John Milliken on behalf of We Care      Represented By  
Edward McCutchan

Jack Miller and Virginia Miller      Represented By  
Edward McCutchan

Dorothy Sanders      Represented By  
Edward McCutchan

Charlotte Pitois      Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan
Troy Winslow and Robin Winslow	Represented By Edward McCutchan
Mark D Shulte individually and on	Represented By Edward McCutchan
Henry T Crigler and Kathleen	Represented By Edward McCutchan
Francine Deering	Represented By Edward McCutchan
Gregge Vernon	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Louise Escher York, individually	Represented By Edward McCutchan
Amy Marshall	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By Edward McCutchan
Marvin Taylor	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Jerry Strickler and Linda M.

Represented By  
Edward McCutchan

Ryan Strickler

Represented By  
Edward McCutchan

Donald Stewart

Represented By  
Edward McCutchan

Walter Spiridonoff

Represented By  
Edward McCutchan

Sandy Smith and Edward L. Smith

Represented By  
Edward McCutchan

Lindy Sinclair

Represented By  
Edward McCutchan

Richard Seversen individually and

Represented By  
Edward McCutchan

Beverly J. Taylor

Represented By  
Edward McCutchan

Patricia L Marshall

Represented By  
Edward McCutchan

Steve Harvey

Represented By  
Edward McCutchan

Fredric I Mann and Katherine Mann

Represented By  
Edward McCutchan

Dale Davis

Represented By  
Edward McCutchan

Henry T Crigler on behalf of the

Represented By  
Edward McCutchan

James T Deering

Represented By  
Edward McCutchan

Dennis Cordellos

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
John Cleary and Kathleen J. Cleary	Represented By Edward McCutchan
Eileen Boyle individually and on	Represented By Edward McCutchan
Ken Bowerman and Christine	Represented By Edward McCutchan
Gene Barnes	Represented By Edward McCutchan
Dale Barnes and Caroline Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Carl Barnes	Represented By Edward McCutchan
Randy Bailey	Represented By Edward McCutchan
Jackie Ann Albini	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel individually and on	Represented By Edward McCutchan
Richard Abel	Represented By Edward McCutchan
Hyam Liebling and June Liebling	Represented By Edward McCutchan
Gary Dezorzi and Judith Dezorzi	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Graham H Gettamy individually and	Represented By Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Vernon Larson	Represented By Edward McCutchan
Ronald P Lapham and Rosemary E.	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Peter Kerston	Represented By Edward McCutchan
Glen Lane	Represented By Edward McCutchan
Pamela Lane	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Thomas B Marshall	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan
Bill Ong Hing and Lenora Verne	Represented By Edward McCutchan
John Hightower and Polly Ann	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#23.00** Defendant Darin Davis' motion for attorney's fees

fr. 9/12/18

Docket 228

**Tentative Ruling:**

After the prior hearing on this matter, the Court continued the hearing for the parties to brief two issues: (A) whether Darin Davis ("Defendant") is barred from collecting attorneys' fees because he was not a party to the subcontract agreement (the "Agreement") containing the attorneys' fees clause; and (B) whether Defendant is barred from collecting attorneys' fees by operation of California Business & Professions Code ("B&P") § 7031.

**I. BACKGROUND**

The Court will incorporate its statement of background facts from the prior tentative ruling, with the exception that the Court will modify the facts to clarify that the Agreement did not specify which entity was the "Contractor" in the Agreement. As relevant to the supplemental briefing filed by the parties, the Court will briefly restate some relevant facts and add some new relevant facts.

On June 2, 2004, Asphalt Professionals, Inc. ("Plaintiff"), as the subcontractor, and an unidentified contractor (the "Contractor") entered into the Agreement. Declaration of Declaration of Ray B. Bowen, Jr. ("Bowen Declaration") [doc. 244], ¶ 2, Exhibit 3. In the Agreement, T.O. IX, LLC ("T.O.") was identified as the "Owner" and as a third-party beneficiary. *Id.* In relevant part, the Agreement provides:

PARTIES: This Subcontract Agreement ("Agreement") is between Contractor and Subcontractor. Any references to "Owner" shall refer to T.O. IX, LLC. The Owner is an express third-party beneficiary to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

this Agreement. *Owner has the right to enforce the provisions of this Agreement against Subcontractor.* At any time Owner requests information it deems necessary from Subcontractor, Subcontractor agrees to provide such information within three (3) days of Owner's request. In the event Contractor's involvement in the Project terminates for any reason, Subcontractor will, upon Owner's written request, recognize Owner or any person or entity designated by Owner as the successor-in-interest to Contractor under this Agreement.

...

ATTORNEYS' FEES: In the event that Contractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Subcontractor by third parties in which Contractor is joined as a party or interpleads, whether the same proceeds to judgment or not, Subcontractor agrees to pay to Contractor reasonable attorneys' fees. In the event that Subcontractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Contractor by third parties in which Subcontractor is joined as a party or interpleads, whether the same proceeds to judgment or not, Contractor agrees to pay to Subcontractor reasonable attorneys' fees. The parties' covenants set forth in this Paragraph 23 shall survive and be enforceable following termination of this Agreement.

Agreement, ¶¶ 1, 23 (emphasis added).

Plaintiff eventually sued Defendant in state court, asserting claims of breach of contract, foreclosure of a mechanic's lien, quantum meruit and fraud. Request for Judicial Notice ("RJN") [doc. 246], Exhibit A. Throughout its fourth amended complaint filed in the state court (the "FAC"), Plaintiff alleged that, at all times, T.O. was the alter ego of Defendant, among others. *Id.* Plaintiff also alleged that on "June 2, 2004, [P]laintiff entered into a written contract *with defendants T.O., D and S, D & S Development, [Defendant]*" and others. FAC, ¶ 24 (emphasis added). Plaintiff alleged that all of these named defendants had breached the Agreement. FAC, ¶¶ 25,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Darin Davis**  
27.

**Chapter 7**

On October 29, 2010, the state court entered a judgment in favor of Plaintiff and against T.O. IX, LLC ("T.O.") on Plaintiff's breach of contract, foreclosure of mechanic's lien and quantum meruit claims. Bowen Declaration, ¶ 3, Exhibit 12. On January 18, 2011, the state court entered an order against T.O. awarding Plaintiff attorneys' fees (the "Fees Order"). RJN, Exhibit D. The state court based its award on the attorneys' fees provision in the Agreement. *Id.* ("The attorney fee clause and only the attorney fees clause can ultimately render the aggrieved party whole...."). On December 23, 2011, after trial, the state court issued a statement of decision on alter ego liability (the "Alter Ego Judgment"). Bowen Declaration, ¶ 5, Exhibit 14. In relevant part, after making extensive findings, the state court held:

There is such a unity of interest and ownership that the separateness of defendants T.O. IX, LLC, D and S Homes, Inc., D & S Development, L.L.C., [Defendant]... has ceased;

Adherence to the separate existence of defendants D and S Homes, Inc., D & S Development, L.L.C., [Defendant]... with T.O. IX, LLC, would, under the particular circumstances of this case, sanction a fraud or promote injustice; that is, if the acts are treated as those of T.O. IX, LLC alone, an inequitable result will follow;

Defendants D and S Homes, Inc., D & S Development, L.L.C., [Defendant]... are each the alter ego of defendant T.O. IX, LLC.

The liability of the Interlocutory Judgment After Court Trial entered October 29, 2010 and of the Order Re Attorney Fees entered January 18, 2011 and any other or future order or orders awarding damages, punitive damages, *attorneys fees and/or costs* to [Plaintiff] against T.O. IX, LLC in this case hereby is and will be extended to defendants D and S Homes, Inc., D & S Development, L.L.C., [Defendant]... jointly and severally, based upon the doctrine of *alter ego*....

Alter Ego Judgment, ¶¶ 16-19 (emphasis added). The Alter Ego Judgment was affirmed on appeal (the "Alter Ego Appellate Decision"). Bowen Declaration, ¶ 6,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Exhibit 15. In the Alter Ego Appellate Decision, the appellate court noted that:

[Plaintiff] signed the subcontract with T.O. IX but the agreement provides the parties are [Plaintiff], the subcontractor, and a "Contractor" that is not identified. After signing the contract, [Plaintiff] learned that T.O. IX was not the builder. On August 11, 2005, [Defendant], the president of D & S Homes, notified [Plaintiff] that he was terminating the T.O. IX contract. In that letter he referred to that agreement as "our contract," not as T.O. IX's contract.

Alter Ego Appellate Decision, p. 5.

After Defendant filed his chapter 7 petition, Plaintiff filed a complaint requesting nondischargeability of the debts owed to it and denial of Defendant's discharge (the "Adversary Complaint"). In the Adversary Complaint, Plaintiff continued to allege that Defendant was a party to the Agreement. *See* Adversary Complaint, ¶ 11 ("During 2004, *defendant* and entities he owned and controlled, knowingly entered into a subcontract agreement with plaintiff...") (emphasis added); *see also* ¶¶ 12, 19(d). In its prayer for relief, Plaintiff requested attorneys' fees incurred by Plaintiff during the course of the adversary proceeding. Adversary Complaint, p. 11. Plaintiff also asserted that Defendant was a party to the Agreement in both pretrial stipulations filed in this adversary proceeding [docs. 69, p.4, 140, p.4]. In both pretrial stipulations, Plaintiff also continued to assert that T.O. and other entities were alter egos of Defendant [docs. 69, pp. 6-7, 140, pp. 6-7].

On June 18, 2018, the Court entered judgment in favor of Defendant [doc. 221]. Defendant then filed his motion for an award of attorneys' fees (the "Motion") [doc. 228]. After opposition by Plaintiff and a hearing on the Motion, the Court continued the hearing to provide Plaintiff an opportunity to brief issues Plaintiff raised for the first time at the hearing on the Motion. On October 3, 2018, Plaintiff filed its supplemental brief [doc. 244]. Plaintiff argues, for the first time over the course of the eight years of litigation between the parties in this Court, that Defendant is not a party to the Agreement. Plaintiff also asserts that B&P § 7031 bars Defendant's recovery of attorneys' fees. On October 10, 2018, Defendant filed his supplemental brief [doc. 245].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... Darin Davis  
II. ANALYSIS

Chapter 7

***A. The State Court Held that Defendant Effectively Is a Party to the Agreement***

Plaintiff asserts that the state trial and appellate courts found that Defendant was not a party to the Agreement. To support its argument, Plaintiff refers to the appellate court's comment that the Agreement was between Plaintiff and "a 'Contractor' that is not identified." Although the appellate court did note that the Agreement did not identify the "Contractor," neither the appellate court nor the trial court held that Defendant was not a party to the Agreement.

In fact, the trial court implicitly found that Defendant *is* a party to the Agreement. In its Fees Order, the state trial court awarded Plaintiff attorneys' fees based on the attorneys' fees provision in the Agreement. Subsequently, in its Alter Ego Judgment, the trial court held that Defendant, among others, was liable for the attorneys' fees because Defendant was an alter ego of multiple other entities, including T.O. Given that the state court held that Defendant, among others, is liable for Plaintiff's attorneys' fees pursuant to the Agreement, the state court necessarily found that Defendant, among other entities, qualifies as a party for purposes of the Agreement.

This conclusion is bolstered by the state trial court's entry of the Alter Ego Judgment. Plaintiff argued for, and the state court found, alter ego liability for the purpose of holding Defendant, among others, liable for breach of the Agreement although Defendant, as an individual, is not a signatory to the Agreement.

***B. California Law Allows for Recovery of Attorneys' Fees from Nonsignatory Defendants***

"In cases involving nonsignatories to a contract with an attorney fee provision, the following rule may be distilled from the applicable cases: A party is entitled to recover its attorney fees pursuant to a contractual provision only when the party would have been liable for the fees of the opposing party if the opposing party had prevailed." *Dell Merk, Inc. v. Franzia*, 132 Cal.App.4th 443, 451 (Ct. App. 2005). The line of cases allowing recovery of attorneys' fees by nonsignatory defendants against whom plaintiffs sought liability based on the doctrine of alter ego has been developed under Cal. Civ. Code § 1717(a). In *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124 (1979),



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

the Supreme Court of California held that the mandate of reciprocity set forth in Cal. Civ. Code § 1717(a) ensured that, where a plaintiff sued a nonsignatory defendant to hold the defendant liable on the contract, and the defendant prevailed, the defendant could use an attorneys' fees provision from the signatory parties' agreement and mutuality provided by Cal. Civ. Code § 1717(a) to recover the defendant's attorneys' fees. Based on *Reynolds*, nonsignatory defendants have been allowed to recover attorneys' fees in accordance with Cal. Civ. Code § 1717(a) despite not being a party to the applicable contract and despite the attorneys' fees provisions within the applicable agreements being unilateral, i.e., allowing only the plaintiff to recover its attorneys' fees. See, e.g. *Burkhalter Kessler Clement & George LLP v. Hamilton*, 19 Cal.App.5th 38 (Ct. App. 2018).

Here, the Court has determined that Cal. Civ. Code § 1717(a) does not apply to this action; instead, the Court held that Defendant may recover his attorneys' fees pursuant to Cal. Civ. Code §§ 1021 and 1032 and the attorneys' fees provision in the Agreement. Nevertheless, the Court may apply the reasoning of *Reynolds* to this case. The Agreement's attorneys' fees provision states:

In the event that Contractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof ... Subcontractor agrees to pay to Contractor reasonable attorneys' fees. In the event that Subcontractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof ... Contractor agrees to pay to Subcontractor reasonable attorneys' fees.

Agreement, ¶ 23. Based on this language, Plaintiff explicitly contracted for reciprocity as to liability for attorneys' fees. Had Plaintiff prevailed on its nondischargeability claim, because of the Alter Ego Judgment, Plaintiff would have been able to collect its award of attorneys' fees from Defendant. In fact, in the Adversary Complaint, Plaintiff requested an award of attorneys' fees; for a nondischargeability claim under § 523(a)(2)(A), Plaintiff's bases to obtain an award of attorneys' fees are the Agreement's attorneys' fees provision **and** the Alter Ego Judgment. Based on the authorities above, as a prevailing party, Defendant may receive an award of attorneys' fees under the Agreement.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Although Plaintiff now argues that the term "Contractor" is too vague to allow for Defendant's recovery of attorneys' fees, the Agreement explicitly provides T.O. the right to enforce any provision in the Agreement, including the attorneys' fees provision:

This Subcontract Agreement ("Agreement") is between Contractor and Subcontractor. Any references to "Owner" shall refer to T.O. IX, LLC. The Owner is an express third-party beneficiary to this Agreement. *Owner has the right to enforce the provisions of this Agreement against Subcontractor.*

Agreement, ¶ 1 (emphasis added). In light of this provision, Plaintiff agreed that T.O. would have the right to enforce any provision of the Agreement. Because the state court held that T.O. is an alter ego of Defendant, Defendant also has a right to enforce any provision of the Agreement. As such, Defendant is entitled to an award of attorneys' fees because: (A) Plaintiff contracted for reciprocity; (B) Plaintiff agreed that T.O. has the ability to enforce any provision in the Agreement; (C) the state trial court held, and the state appellate court affirmed, that T.O. is an alter ego of Defendant; and (D) had Plaintiff prevailed, Plaintiff would have been able to recover its attorneys' fees from Defendant.

Plaintiff does not provide any authority to the contrary. The only potentially related case cited by Plaintiff is *Webber v. Inland Empire Investments*, 74 Cal.App.4th 884 (Ct. App. 1999). However, *Webber* is inapposite. In *Webber*, the plaintiff was an assignee of a note and deed of trust encumbering four parcels owned by Forecast Mortgage Corporation ("Forecast"). *Webber*, 74 Cal.App.4th at 893. Forecast executed the note and deed of trust to finance the purchase of the parcels. *Id.* To help finance the purchase of the parcels, Forecast also obtained a second loan from Sanwa Bank ("Sanwa") and executed a deed of trust in favor of Sanwa. *Id.* The deed of trust in favor of Sanwa was recorded prior to the deed of trust in favor of plaintiff, and thus Sanwa's lien was senior to the plaintiff's lien. *Id.*

Subsequently, Forecast's owner, James P. Previti, transferred title from Forecast to another corporation controlled by Mr. Previti, All Cities Mini-Storage ("All Cities"). *Id.* Then, Mr. Previti used another corporation he controlled, Inland Empire Investments ("Inland"), to purchase the note from Sanwa. *Id.* Next, Mr. Previti caused

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... **Darin Davis**

**Chapter 7**

Forecast to default on the note now held by Inland. *Id.* Finally, Mr. Previti caused Inland to foreclose on the property. *Id.* The effect of Inland's foreclosure was to eliminate the plaintiff's junior lien. *Id.* The trial court found that Mr. Previti's actions constituted a "sham foreclosure." *Id.*

The plaintiff sued Mr. Previti, Inland and other entities. *Id.*, at 894. In relevant part, the plaintiff requested a declaration that his note and deed of trust continued to encumber the subject property by operation of the doctrine of after-acquired title. *Id.* As part of this argument, the plaintiff alleged that Inland was the alter ego of Forecast and the other defendants. *Id.* The plaintiff also asserted a cause of action for conspiracy to intentionally interfere with a contractual relationship. *Id.*, at 895.

With respect to the doctrine of after-acquired title, the trial court found that the defendant entities were alter egos of each other. *Id.*, at 897. "Notwithstanding the trial court's alter ego decision on the first cause of action," the trial court allowed the plaintiff to proceed on its conspiracy cause of action "despite the obvious fact that, if there was really only one defendant, Mr. Previti and his wholly owned corporations, there were no independent coconspirators." *Id.* "As a result of the trial court's decision to allow plaintiff to proceed on a conspiracy theory, *no alter ego instructions were given to the jury.* Instead, the trial court permitted an amendment to the [conspiracy cause of action] *to delete the alter ego allegations* which had been incorporated by reference into the [conspiracy cause of action]." *Id.* (emphasis added). The jury found in favor of the plaintiff and awarded the plaintiff monetary damages. *Id.*, at 894. The trial court then allowed the plaintiff to elect its remedy: the plaintiff could accept a lien against the property based on the court's decision on the doctrine of after-acquired title and alter ego or, as an alternative, the plaintiff could accept the jury's monetary award on the conspiracy cause of action. *Id.* The plaintiff elected the jury's monetary award. *Id.*

The defendants appealed. *Id.*, at 897. On appeal, the defendants argued, among other things, that the court's finding of alter ego related to the first cause of action precluded the jury's verdict of conspiracy because, if the defendants were all alter egos of one another, there could not be a conspiracy between different entities. *Id.*, at 897-98. The appellate court framed the issue as follows:

It is apparent that, if the defendants are to be treated as one because

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

they are all owned and controlled by Mr. Previti, the doctrine that a party cannot interfere with its own contract would apply, and there could be no conspiracy to interfere with the contract because there would not be separate parties to the conspiracy. The issue thus becomes whether, as defendants urge, judgment should be entered for defendants as a matter of law. In other words, defendants contend that the actions taken were orchestrated by Mr. Previti to protect his own economic interests in connection with a contract made by his own corporation.

*Id.*, at 898. The appellate court relied in part on *Shapoff v. Scull*, 222 Cal.App.3d 1457 (Ct. App. 1990), in which case the defendants, including an individual named Christopher Boomis, were found to be alter egos of a development corporation called SERJ Corporation ("SERJ"). *Shapoff*, 222 Cal.App.3d at 1461-62. Subsequently, a jury returned a verdict that SERJ breached an agreement with the plaintiff as a result of the tortious interference of Mr. Boomis. *Id.* In a motion for a new trial, the defendants argued that, in light of the alter ego finding, Mr. Boomis could not be liable for interference with a contract because a party cannot interfere with its own contract. *Id.* In response to the new trial motion, "[t]he trial court... allowed plaintiff to elect between his claims against [Mr.] Boomis, and it deleted the alter ego finding from the judgment." *Webber*, 74 Cal.App.4th at 899 (citing *Shapoff*, 222 Cal.App.3d at 1461-62). The appellate court affirmed. *Shapoff*, 222 Cal.App.3d at 1470-71. Relying on *Shapoff*, the *Webber* court found:

Although, at first glance, the trial court's alter ego finding here appears to be inconsistent with the jury's finding that separate corporations conspired to interfere with the contract between Forecast Mortgage and Mr. Webber, we find no fatal inconsistency. In effect, the trial court allowed plaintiff to proceed on an alter ego theory as to the first cause of action, and an alternative conspiracy theory on the seventh cause of action. When some defendants lost on both causes of action, the trial court ordered plaintiff to elect his remedy.

*Webber*, 74 Cal.App.4th at 900. The *Webber* court believed this result was consistent with the general equitable principles behind alter ego liability. *Id.*, at 900-01. To restate the equitable principles behind alter ego liability, *Webber* cited *Communist*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

*Party v. Valencia, Inc.*, 35 Cal.App.4th 980 (Ct. App. 1995). In *Communist Party*, the plaintiff filed a lawsuit asking the court to find that the defendant corporations were alter egos of the plaintiff in an attempt to recover assets of the defendant corporations. *Communist Party*, 35 Cal.App.4th at 988-89. The appellate court found that the plaintiff, which previously treated the defendant corporations as separate legal entities, could not use the doctrine of alter ego as a fast track to obtaining control over the defendant corporations' assets. *Id.*, at 993-95.

Using some of the general equitable considerations stated in *Communist Party*, the *Webber* court held:

Here, defendants are seeking to apply the alter ego doctrine as a sword to preclude liability or, as Mr. Webber puts it, a shield to protect them from conduct which would otherwise be tortious, even though defendants sought to use the separate corporations to eliminate plaintiff's junior lien through foreclosure. The trial court may well have thought that disregard of the corporate entity in this case would lead to an inequitable result, i.e., the rule that a contracting party cannot be liable for interfering with its own contract would become applicable. *It therefore presumably found that the second requisite for application of the doctrine was not present; i.e., it did not find that failure to disregard the corporate entity would sanction a fraud or promote injustice.* Since the court has considerable equitable discretion, we cannot say that it erred in failing to instruct the jury that the entities were all one entity. This is true even though the first requirement for application of the doctrine, a unity of ownership and interest, was clearly met.

*We therefore conclude that since defendant's premise that there was necessarily only one defendant, Mr. Previti and his alter ego corporations, fails, the conclusion that there could be no conspiracy as a matter of law must also fail. Since the trial court was entitled to, and did, instruct the jury on conspiracy liability, the jury was authorized to find that at least two of the corporations conspired with each other to engage in a sham foreclosure to eliminate Mr. Webber's junior lien.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

*Webber*, 74 Cal.App.4th at 901 (emphases added). As such, in *Webber*, the appellate court blessed the trial court's decision not to proceed with alter ego liability because alter ego liability would lead to an inequitable result, thus failing to satisfy the second element of alter ego liability. Neither the trial court nor the appellate court in *Webber* held that the plaintiff could avail itself of both the alter ego finding *and* the jury verdict awarding the plaintiff money on a claim of conspiracy.

The facts here are not analogous to the facts in *Webber* or *Communist Party*. Here, the state court found alter ego liability, thereby holding Defendant liable for breach of contract damages and for payment of Plaintiff's related attorneys' fees. Unlike *Webber*, the state court has not found that alter ego liability would lead to an inequitable result. Furthermore, an appellate court has upheld that finding of alter ego liability.

Because the state court determined that Defendant would be properly treated as an alter ego of T.O., Plaintiff became entitled to recover its breach of contract damages, and related attorneys' fees, from Defendant. As this Court previously noted, Plaintiff's judgment for breach of contract damages and attorneys' fees against Defendant (and others) has been paid in full. Moreover, during the course of this adversary proceeding, Plaintiff continued to refer to Defendant as a party to the Agreement.

Under *Webber*, it appears plaintiffs are allowed to plead alternative theories, some of which may rely on the doctrine of alter ego and others which require a finding that the defendants are separate and distinct entities, and, if they are successful on all counts, elect the remedy they prefer. If a plaintiff's chosen remedy is based on a claim that would not survive if the trial court found alter ego liability, and the trial court believes it would not be equitable to prevent plaintiff from recovering damages under its chosen theory, the trial court may subsequently find that the second element of alter ego liability is not met.

*Webber* does not stand for the proposition that plaintiffs who obtain an alter ego determination, and who rely on that determination to impose liability, may subsequently shield themselves from that decision to avoid application of a contractual attorneys' fees provision. On the contrary, *Reynolds* and its progeny, under comparable circumstances, allow nonsignatory defendants to collect attorneys'

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

fees. *See, e.g. Burkhalter Kessler*, 19 Cal.App.5th at 46 n.2 ("This case raises an interesting tactical issue: whether a plaintiff should plead an alter ego defendant in the initial complaint (and risk a dismissal with prejudice and possible payment of attorney fees); or should a plaintiff hold off and later seek to amend a prevailing judgment. We take no position on the tactical choice, though we do recollect Ralph Waldo Emerson's cautionary note that: 'When you strike at a king, you must kill him.'").

The Court concludes that there is no equitable basis to bar Defendant's recovery of attorneys' fees, under the Agreement. Once again, Plaintiff has already recovered its breach of contract damages, including attorneys' fees incurred during the state court litigation. Following the payment in full of that award, Plaintiff pursued a claim of nondischargeability under 11 U.S.C. § 523(a)(2)(A). To defend against Plaintiff's § 523(a)(2)(A) claim, Defendant incurred his own attorneys' fees and costs. Consequently, when assessing Defendant's right to payment of his attorneys' fees, the Court will not shield Plaintiff from the Alter Ego Judgment, which treats Defendant as a party to the Agreement.

***C. Plaintiff is Judicially Estopped from Arguing that Defendant is Not a Party to the Agreement***

According to the Supreme Court of the United States—

Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.

Although we have not had occasion to discuss the doctrine elaborately, other courts have uniformly recognized that its purpose is to protect the integrity of the judicial process, by prohibiting parties from deliberately changing positions according to the exigencies of the moment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

*New Hampshire v. Maine*, 532 U.S. 742, 749-50, 121 S.Ct. 1808, 1814, 148 L.Ed.2d 968 (2001) (internal quotations omitted). "The doctrine extends to incompatible statements and positions in different cases." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 566 (B.A.P. 9th Cir. 2002) (citing to *Risetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 605 (9th Cir. 1996)). Courts consider the following factors when applying the doctrine of judicial estoppel:

First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts.

*New Hampshire*, 523 U.S. at 750-51 (internal quotations omitted).

Here, Plaintiff repeatedly contended that Defendant is a party to the Agreement and that Defendant is an alter ego of several entities, including T.O. Plaintiff succeeded in persuading the state court of its position: consequently, the state court held Defendant responsible for breach of contract damages arising from the Agreement, and for payment of Plaintiff's attorneys' fees pursuant to the Agreement's applicable provisions. Plaintiff's prior position that Defendant is a party to the Agreement (and consequently liable for breach of contract damages and Plaintiff's related attorneys' fees) is inconsistent with Plaintiff's current position that Defendant is not a party to the Agreement and thus may not receive an award of attorneys' fees, under the Agreement.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Finally, Plaintiff would derive an unfair advantage if Plaintiff were allowed to maintain its inconsistent position. Plaintiff, having obtained a holding that Defendant is liable for breach of the Agreement and for the payment of Plaintiff's attorney's fees (in accordance with the Agreement), may not avoid the consequences of the same contractual provisions when Defendant constitutes the prevailing party (for the reasons discussed in the Court's earlier ruling). As a result, Plaintiff is judicially estopped from arguing that Defendant cannot avail himself of the attorneys' fee provision in the Agreement.

***D. B&P § 7031 Does Not Bar Defendant's Recovery of Attorneys' Fees***

Pursuant to B&P § 7031—

- (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state *for the collection of compensation for the performance of any act or contract where a license is required* by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.
- (b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state *to recover all compensation paid to the unlicensed contractor for performance of any act or contract.*

B&P § 7031(a), (b) (emphases added). B&P § 7031 plainly is not applicable to the facts here. Defendant is not attempting to recover compensation for work he performed as a contractor. Defendant is attempting to recover attorneys' fees he has incurred in defending Plaintiff's claim of nondischargeability *against Defendant*. Moreover, Defendant himself *is* a licensed contractor.

The single case cited by Plaintiff does not state otherwise. In *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal.4th 412 (2005), a subcontractor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

sued a contractor for breach of contract for work the subcontractor performed for the contractor, and the contractor used B&P § 7031 as a defense by asserting that the subcontractor was not properly licensed when the subcontractor performed the work. *See also Hydrotech Sys., Ltd. v. Oasis Waterpark*, 52 Cal.3d 988, 992 (1991) (holding that unlicensed contractor cannot receive compensation for its services under B&P § 7031). Here, neither T.O. nor Defendant is attempting to recover compensation for work performed as a contractor. As such, *MW Erectors* and *Hydrotech* are inapplicable to this case.

### III. CONCLUSION

The Court will adopt its prior tentative ruling, as modified below. The Court will incorporate this tentative ruling into its prior tentative ruling.

Defendant must submit a declaration attaching an itemized statement of the fees incurred during the nondischargeability portion of this matter no later than **October 31, 2018**. Plaintiff may respond to the declaration **only as to the reasonableness of Defendant's incurred fees and costs** no later than **November 7, 2018**. The Court will continue this hearing to **2:30 p.m. on November 21, 2018**.

#### 9/12/2018 Tentative:

Grant in part and continue for supplemental disclosures.

### I. BACKGROUND

On June 2, 2004, Asphalt Professionals, Inc. ("Plaintiff"), as the subcontractor, *and an unidentified contractor* entered into a subcontract agreement (the "Agreement"). Declaration of Alan W. Forsley ("Forsley Declaration"), ¶ 3, Exhibit 1. *In the Agreement, T.O. IX, LLC was identified as the "Owner."* *Id.* In relevant part, the Agreement provides:

ATTORNEYS' FEES: In the event that Contractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Subcontractor by third parties in which Contractor is joined as a party

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

or interpleads, whether the same proceeds to judgment or not, Subcontractor agrees to pay to Contractor reasonable attorneys' fees. In the event that Subcontractor prevails in any reference proceeding or court action arising out of this Agreement or the enforcement or breach thereof, or in any action brought against Contractor by third parties in which Subcontractor is joined as a party or interpleads, whether the same proceeds to judgment or not, Contractor agrees to pay to Subcontractor reasonable attorneys' fees. The parties' covenants set forth in this Paragraph 23 shall survive and be enforceable following termination of this Agreement.

Agreement, ¶ 23.

On September 29, 2005, after T.O. did not pay Plaintiff for all of Plaintiff's work on a project, Plaintiff sued T.O., Darin Davis ("Defendant") and others in state court (the "State Court Action"). *See* Court's Decision [doc. 219], p. 7. In the State Court Action, Plaintiff asserted breach of contract, foreclosure on a mechanic's lien, fraud, conspiracy and quantum meruit. *Id.*

The trial court trifurcated the State Court Action into three trial phases, with the first phase involving Plaintiff's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. *Id.* On October 29, 2010, after a bench trial, the state court entered an interlocutory judgment as to the first phase (the "Phase One Judgment"). *Id.* After entry of the Phase One Judgment, Plaintiff filed a motion for an award of attorneys' fees, and the trial court awarded Plaintiff \$1.65 million in attorneys' fees. *Id.*, p. 8. An appellate court subsequently upheld the trial court's award of fees. *Id.*

The second phase of the State Court Action involved Plaintiff's alter ego claims. *Id.* On December 23, 2011, the state court issued a statement of decision after phase two of trial (the "Phase Two Decision"). *Id.* In the Phase Two Decision, the state court found that T.O., among other entities, was an alter ego of Defendant. *Id.* As a result, the state court held that the liability of the Phase One Judgment and the award of attorneys' fees, as well as any other or future orders awarding damages, punitive damages, attorneys' fees and/or costs to Plaintiff against T.O. would be extended to Defendant, among others. *Id.* An appellate court also upheld the Phase Two Decision.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

*Id.*, p. 9.

On June 26, 2013, Plaintiff filed an Acknowledgment of Satisfaction of Judgment (the "Satisfaction of Judgment") in state court. *Id.* Through the Satisfaction of Judgment and the stipulation attached thereto, Plaintiff acknowledged that the Phase One Judgment and any attorneys' fees awarded to date had been paid in full. *Id.*

On June 15, 2010, Defendant filed a voluntary chapter 7 petition. On August 16, 2010, Plaintiff filed a complaint against Defendant (the "Complaint"), objecting to Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2) and (a)(4) and requesting nondischargeability of any debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A). In the Complaint, Plaintiff alleged:

Defendant falsely represented that he intended to act as a licensed general contractor for a proposed building project in Thousand Oaks. Defendant also falsely represented that he and various unlicensed entities he owned or controlled were "owner/builders" of the proposed building project, rather than licensed general contractors. From 2003 until 2005, Defendant and the unlicensed entities proceed to construct the subject real property. Defendant knew that, under California law, only a properly licensed general contractor could construct, or contract with other to construct, the subject real property.

In 2004, Defendant and entities he owned and controlled knowingly entered into the Agreement with Plaintiff for labor, materials and services without disclosing that Defendant and the entities he owned and controlled were unlicensed contractors and without disclosing that the construction engineering, surveying, plans and drawings provided to Plaintiff were based on an inaccurate and incomplete 40-year-old "as built" survey. Because of the incomplete and inaccurate information provided to Plaintiff, Plaintiff was unable to construct a portion of the curbs, gutters and public roadways at the subject real property.

Rather than disclose the truth about the survey, Defendant (a) intentionally terminated the Agreement; (b) refused to pay Plaintiff for past due labor, materials and services provided to date; (c) refused to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

pay Plaintiff the agreed upon amount in the Agreement; (d) engaged the services of other sub-contractors to remove and replace the portion of the curbs, gutters and public roadways that Plaintiff could not construct; and (e) back-charged Plaintiff for an amount in excess of the cost Defendant incurred to construct the improvements.

Had Defendant disclosed that the subject real property was constructed in violation of California law or that the plans provided to Plaintiff were inaccurate or incomplete, Plaintiff would not have entered into the Agreement. Through Defendant's express and implied representations, Defendant was able to deceive Plaintiff into entering into the Agreement with T.O. As a result, Plaintiff requests a nondischargeable judgment against Defendant in the amount of \$1 million plus interest accrued on said amount to the date of payment, plus the costs of this proceeding and attorney's fees incurred by Plaintiff in this adversary proceeding.

Complaint, pp. 2-11. Aside from these allegations, the Complaint also included allegations that Defendant did not accurately complete his bankruptcy schedules and statements and that, as a result, Defendant should be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) and (a)(4). Complaint, pp. 7-10. On September 17, 2010, Defendant filed an answer to the Complaint (the "Answer") [doc. 3]. In the Answer, Defendant asserted the following affirmative defenses: (a) Failure to State a Claim; (b) Statutes of Limitations; (c) that Plaintiff's own negligent acts or omissions led to any damage suffered by Plaintiff; (d) that third parties caused any damage to Plaintiff; (e) Waiver; (f) Estoppel; (g) Consent; and (h) Laches.

The Court bifurcated this proceeding, such that the Court first heard Plaintiff's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on Plaintiff's claims under 11 U.S.C. § 727 [doc. 113]. The Court initially stayed the 11 U.S.C. § 523 portion of this adversary proceeding to await conclusion of the State Court Action. On April 19, 2017, nearly seven years after Defendant filed his chapter 7 petition, Plaintiff and Defendant appeared for a status conference. At that time, the Court informed the parties that it would no longer delay prosecution of this adversary proceeding until the State Court Action was resolved.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

On August 31, 2017, the parties filed a joint pretrial stipulation (the "JPS") [doc. 140]. In the JPS, the parties agreed that the Court would try the following issues of law:

- (a) Whether or not, by reason of the false and misleading express and implied representations of Defendant and by reason of Plaintiff's reliance upon the truthfulness of the same, the obligation owed to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).
- (b) Whether or not, as a result of the intentionally false and misleading representations of Defendant, Plaintiff's Claim in the amount of \$1,130,951.42 is allowed and nondischargeable.
- (c) Whether Defendant had a legal duty to disclose to Plaintiff that T.O. was not a California licensed general contractor.
- (d) Whether Defendant had a legal duty to disclose to Plaintiff that entities in control of the subject project were not licensed general contractors.
- (e) Whether Defendant had a legal duty to disclose to Plaintiff the age of any plans given to Plaintiff.
- (f) Whether Defendant had a legal duty to disclose whether any plans given to Plaintiff were inaccurate.
- (g) Whether Plaintiff is bound by the allegations in the Complaint and may not introduce evidence contrary to the allegations therein.
- (h) Whether Plaintiff has standing to assert the causes of action in the Complaint/adversary proceeding.
- (i) Whether any alleged statement or omission made by Defendant to Plaintiff is a material fact.

JPS, pp. 16-17.

On November 6, 2017, Plaintiff filed a motion for summary judgment ("Plaintiff's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

MSJ") [doc. 165]. On the same day, Defendant filed a motion for summary judgment ("Defendant's MSJ") [doc. 162]. On February 28, 2018, the Court entered an order granting summary adjudication in favor of Plaintiff only on the following issue: that nondisclosure of T.O.'s status as an unlicensed entity would be material (the "MSJ Order") [doc. 208]. The Court otherwise denied both Plaintiff's MSJ and Defendant's MSJ.

On February 6, 2018, the Court entered an order approving the JPS (the "Pretrial Order") [doc. 203]. In the Pretrial Order, the Court noted that "[i]n addition to determining, based on 11 U.S.C. § 523(a)(2)(A), the nondischargeability of any debt owed by [Defendant] to [Plaintiff], this Court also will determine *the amount of any nondischargeable debt payable to [Plaintiff], i.e., any damages arising from fraud.*" Pretrial Order, p. 2 (emphasis in Pretrial Order).

On April 23 and 24, 2018, the Court held trial on Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). At trial, the Court made several findings regarding the Agreement, including findings regarding how T.O. was characterized in the Agreement, how certain terms were defined, which contractor's license number was included in the Agreement, the nature of oral communications between the parties regarding licensure at the time the parties entered into the Agreement and the review of the as-built survey provided with the Agreement. Court's Decision, pp. 3-5. Plaintiff testified at trial that it would not have entered into the Agreement had Plaintiff known about T.O.'s license status or the age of the as-built survey. *Id.*, p. 17.

On June 13, 2018, the Court issued a decision after trial (the "Court's Decision") [doc. 219]. In the Court's Decision, the Court held that Plaintiff did not establish that Defendant made oral or written representations to Plaintiff regarding T.O.'s license status or the age of the as-built survey before the parties entered into the Agreement. Court's Decision, p. 14. The Court also held that any omission by Defendant regarding the license status of T.O. or the age of the as-built survey was not fraudulent. *Id.*

On June 29, 2018, Defendant filed a motion requesting attorneys' fees and costs pursuant to Cal. Civ. Code § 1717 and/or Cal. Code of Civ. Proc. ("CCP") §§ 1021 and 1032 (the "Motion") [doc. 228]. On August 28, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 238]. In the Opposition, Plaintiff requests

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

sanctions against Defendant pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9011. On September 5, 2018, Defendant filed a reply to the Opposition [doc. 239].

## II. ANALYSIS

In federal courts, there is generally no right to attorney's fees unless authorized by contract or by statute. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257, 95 S.Ct. 1612, 1621, 44 L.Ed.2d 141 (1975) ("Other recent cases have also reaffirmed the general rule that, absent statute or enforceable contract, litigants pay their own attorneys' fees."). In *Cohen v. de la Cruz*, 523 U.S. 213, 218–20, 118 S.Ct. 1212, 1216–17, 140 L.Ed.2d 341 (1998), the Supreme Court of the United States interpreted the discharge exceptions under 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(9) to encompass all liability arising on account of a debtor's fraudulent conduct, including attorneys' fees and costs to which the creditors were entitled under state law. As such, "the determinative question for awarding attorney's fees is whether the creditor would be able to recover the fee outside of bankruptcy under state or federal law." *In re Hung Tan Pham*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000). Here, Defendant cites Cal. Civ. Code § 1717 and CCP §§ 1021 and 1032 as the operative state statutes.

### *A. Cal. Civ. Code § 1717(a)*

Pursuant to Cal. Civ. Code § 1717(a)—

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

"Civil Code § 1717 makes an otherwise unilateral contractual obligation to pay attorney's fees into a reciprocal one in an action on the contract but Civil Code § 1717 is not applicable in a tort action." *In re Bic Pho*, 2016 WL 1620375, at \*3 (Bankr. N.D. Cal. Apr. 20, 2016); *see also Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998)



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

(finding that § 1717 applies only to fees incurred to litigate contract claims); *and In re Deuel*, 482 B.R. 323, 328 (Bankr. S.D. Cal. 2012) (same).

To obtain fees pursuant to Cal. Civ. Code § 1717(a), "[t]hree conditions must be met...." *In re Penrod*, 802 F.3d 1084, 1087 (9th Cir. 2015).

First, the action in which the fees are incurred must be an action "on a contract," a phrase that is liberally construed. Second, the contract must contain a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must be the party who "prevail[ed] on the contract," meaning (with exceptions not relevant here) "the party who recovered a greater relief in the action on the contract." Cal. Civ.Code § 1717(b)(1).

*Id.*, at 1087-88 (internal citation omitted). "Under California law, an action is 'on a contract' when a party seeks to enforce, or avoid enforcement of, the provisions of the contract." *Id.*, at 1088.

Although past interpretations of the phrase "action on a contract" have been murky, two recent decisions by the Ninth Circuit Court of Appeals shed some light on which disputes fall within the purview of Cal. Civ. Code § 1717(a). In *Penrod*, prepetition, the debtor and a lender entered into an installment sale contract when the debtor purchased a vehicle. *Penrod*, 802 F.3d at 1086. The contract granted the lender a security interest in the vehicle. *Id.* The debtor then filed a chapter 13 petition and, in her proposed chapter 13 plan, bifurcated the lender's claim into a secured claim in the amount of \$16,000 and an unsecured claim in the amount of \$10,000. *Id.* The lender objected to the proposed chapter 13 plan, arguing that its entire claim should be treated as secured in accordance with the "hanging paragraph" below 11 U.S.C. § 1325(a)(9), which prohibits bifurcation of claims that are secured by a "purchase money security interest" in a vehicle. *Id.* Eventually, the bankruptcy court decided that the lender was entitled to a \$19,000 secured claim and a \$7,000 unsecured claim. *Id.*, at 1087. After an appeal by the lender, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed the bankruptcy court's ruling. *Id.*

The debtor then filed a motion to recover attorneys' fees she incurred opposing the lender's objection to confirmation of her chapter 13 plan. *Id.* The debtor relied on a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

provision in the installment sale contract which read, "You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts." *Id.* Pursuant to this language, the debtor argued she was entitled to attorneys' fees under Cal. Civ. Code § 1717(a). *Id.* The bankruptcy court disagreed, holding that the action was not an action "on a contract" because the action at issue in *Penrod* turned on a question of federal bankruptcy law. *Id.* The district court affirmed the bankruptcy court. *Id.* The Ninth Circuit Court of Appeals disagreed, explaining that:

[The lender] sought to enforce the provisions of its contract with [the debtor] when it objected to confirmation of her proposed Chapter 13 plan. The plan treated [the lender's] claim as only partially secured, but [the lender] insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the contract—in particular, the provision in which [the debtor] granted a security interest in her Taurus to secure "payment of all you owe on this contract." (Had the contract not granted [the lender] a security interest in the car, [the lender] could not have asserted a secured claim for *any* amount. *See* 11 U.S.C. § 506(a).) The security interest conveyed by the contract covered not just the funds [the debtor] borrowed to pay for the Taurus, but also the funds she borrowed to refinance the negative equity in the Explorer. The sole issue in the hanging-paragraph litigation was whether this provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude the negative-equity portion of the loan. *See In re Penrod*, 611 F.3d at 1159–61 & n. 2. By prevailing in that litigation, [the debtor] obtained a ruling that precluded [the lender] from fully enforcing the terms of the contract.

*Id.*, at 1088. On this analysis, the Court of Appeals believed the objection to the debtor's confirmation of her chapter 13 plan qualified as an "action on a contract" for purposes of Cal. Civ. Code § 1717(a). *Id.*

The Court of Appeals believed the bankruptcy court's and district court's interpretation of Cal. Civ. Code § 1717(a) was too narrow. *Id.* Those courts had concluded that Cal. Civ. Code § 1717(a) "applies only if the party defeats enforcement

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

under non-bankruptcy law" and, because the debtor had prevailed under bankruptcy law, Cal. Civ. Code § 1717(a) did not apply. *Id.* The Court of Appeals held that California law did not prescribe any such limitation to Cal. Civ. Code § 1717(a). *Id.*, at 1089.

After *Penrod*, the Ninth Circuit Court of Appeals issued a decision further clarifying the boundaries of Cal. Civ. Code § 1717(a). *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016). In *Bos*, the debtor was an employer obligated to make payments to certain employee pension funds administered by the Board of Trustees in accordance with trust agreements. *Id.*, at 488. The debtor failed to make the requirement payments and, as a result, signed a promissory note agreeing to make monthly contributions to the funds and personally guaranteeing the payments. *Id.* The debtor was unable to make these payments. *Id.* As such, after the Board of Trustees sued the debtor, an arbitrator ruled the debtor had violated the agreements and a California Superior Court confirmed the arbitration award in a judgment. *Id.*

Around this time, the debtor filed a chapter 7 petition. *Id.* Subsequently, the Board of Trustees filed an adversary proceeding requesting nondischargeability of the judgment pursuant to 11 U.S.C. § 523(a)(4). *Id.* The bankruptcy court held that the judgment was nondischargeable under 11 U.S.C. § 523(a)(4) because the debtor was a fiduciary under the Employee Retirement Income Security Act ("ERISA"). *Id.*, at 489. The district court affirmed. *Id.* On appeal, the Court of Appeals reversed, holding that the debtor was not a fiduciary under ERISA and that 11 U.S.C. § 523(a)(4) did not apply to the debtor. *Id.* The debtor then moved to recover attorneys' fees pursuant to Cal. Civ. Code § 1717 and, alternatively, under ERISA. *Id.*

The Court of Appeals first referenced several prior decisions by the BAP and California courts:

The California Supreme Court has explained that "section 1717 applies only to actions that contain at least one contract claim," and that "[i]f an action asserts both contract and tort or other noncontract claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." *Santisas*, 17 Cal.4th at 615, 71 Cal.Rptr.2d 830, 951 P.2d 399. Consistent with *Santisas*, we have previously held that a nondischargeability action is "on a contract" within section 1717 if "the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

bankruptcy court needed to determine the enforceability of the ... agreement to determine dischargeability." *In re Baroff*, 105 F.3d 439, 442 (9th Cir.1997).

The Bankruptcy Appellate Panel of the Ninth Circuit has held that *Santisas* and relevant Ninth Circuit cases establish not just a rule of inclusion, but also a rule of exclusion: that "if the bankruptcy court did *not* need to determine whether the contract was enforceable, then the dischargeability claim is *not* an action on the contract within the meaning of [California Civil Code] § 1717." *In re Davison*, 289 B.R. 716, 723 (9th Cir. BAP 2003) (emphasis added).

*Id.* The court then explicitly adopted the BAP's interpretation of Cal. Civ. Code § 1717, noting that the construction "accords with the common sense meaning of the phrase 'on a contract' and finds ample support in our precedents." *Id.*, at 490. The *Bos* court then cited three prior decisions by the Court of Appeals that supported the BAP's interpretation above. *Id.*

First, the Court of Appeals cited *In re Johnson*, 756 F.2d 738 (9th Cir. 1985), for the proposition that an action is not an action "on a contract" if "the action neither litigated the validity of the contract nor required the bankruptcy court to consider 'the state law governing contractual relationships.'" *Bos*, 818 F.3d at 490 (citing *Johnson*, 756 F.2d at 740). "More broadly, [the Court of Appeals] instructed that when federal and not state law governs the substantive issues involved in the adversary proceeding, [the court] may not award attorney's fees pursuant to a state statute." *Id.* (citing *Johnson*, 756 F.2d at 741).

Next, the court cited *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980), where the Court of Appeals had held that a nondischargeability action in bankruptcy was not "on a contract" under an Oregon fee-shifting statute identical to Cal. Civ. Code § 1717. "The reason, we later explained, was that 'the bankruptcy court did not adjudicate the validity of the note in determining whether the debt was dischargeable,' and so the note was merely 'collateral to the non-dischargeability proceeding.'" *Bos*, 818 F.3d at 490 (citing *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (citing *Fulwiler*, 524 F.2d at 909-10)).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Finally, the Court of Appeals referenced *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996), where the court relied on *Baroff* and held that "a creditor's 'dischargeability claim [was] not an action on the contract,' within the meaning of the contract itself, because 'the bankruptcy court did not need to determine the enforceability of the ... agreement to determine dischargeability.'" *Bos*, 818 F.3d at 490 (quoting *Hashemi*, 104 F.3d at 1126).

Based on these authorities, the *Bos* court explained:

In light of our precedents, we are persuaded that the action underlying Bos's fee request—the nondischargeability proceeding that began in bankruptcy court—was not an action "on a contract" within the meaning of section 1717. As the parties agree, "[t]here was no 'breach of contract' claim in the Trust Funds' adversary complaint." The nondischargeability proceeding arose entirely under the federal Bankruptcy Code, and in no way required the bankruptcy court to determine whether or to what extent the Trust Agreements or the Note were enforceable against Bos, or whether Bos had violated their terms. Those questions had been answered in arbitration, and confirmed by a State Court; indeed, in the nondischargeability action Bos conceded that such contracts were valid and that he had breached them. The litigation from that point forward asked only whether federal bankruptcy law forbade Bos from discharging the debts everyone agreed he owed to the Funds. Such litigation is collateral to a contract rather than "on a contract," and as a consequence Bos may not use section 1717 to recover the fees he incurred in pursuing it.

*Id.* The *Bos* court also found that *Penrod* did not change the analysis and distinguished *Penrod* on the basis that, in *Penrod*, the central question presented to the court was whether the court should enforce a provision in the parties' agreement or whether the debtor could avoid enforcement in accordance with the Bankruptcy Code. *Id.*, at 490-91. In *Bos*, the nondischargeability issue did not present any issues regarding the validity or enforceability of the subject agreement. *Id.*, at 491.

After *Bos*, a bankruptcy court within the Ninth Circuit addressed the issue of whether a nondischargeability action under 11 U.S.C. § 523(a)(2)(A) may be considered an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

action "on a contract" for purposes of Cal. Civ. Code § 1717. *In re Zarate*, 567 B.R. 176 (Bankr. N.D. Cal. 2017). In *Zarate*, creditors initiated an adversary proceeding against the debtors alleging that the debtors "'misrepresented facts, concealed and failed to disclose' material facts in order to induce plaintiffs to enter into the" subject agreement. *Id.*, at 181. The creditors requested damages in the amount of \$1.34 million plus prejudgment interest, contractual attorneys' fees and costs. *Id.* Subsequently, the court entered a stipulated judgment through which the debtors agreed to a nondischargeable judgment in the amount of \$831,018.31. *Id.* The creditors then filed a motion for an award of attorneys' fees based on the parties' contract, which included a provision that stated: "In event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith." *Id.*, at 181-83.

The *Zarate* court first noted that "under established California law, a tort claim does not 'enforce' a contract." *Id.*, at 184 (citing *Stout v. Turney*, 22 Cal.3d 718, 730 (1978); and *Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998)). Next, the court found that "the dischargeability of a debt under § 523(a)(2)(A) resolves a tort claim." *Id.* (citing *In re Candland*, 90 F.3d 1466, 1470 (9th Cir. 1996)). The court did not find persuasive the plaintiffs' arguments that the nondischargeability action could be interpreted as one "on the contract." *Id.* The court held that, unlike cases like *Penrod*, the court did not have to assess the enforceability of the subject agreement in *Zarate*:

Here, whether the APA or the 2009 Agreement were enforceable was never a question and the interpretation of these agreements was never an issue. Based on the above, this was not an action on a contract. The APA and the 2009 Agreement provided the context out of which this dispute arose, but this was not an action on a contract. Civil Code § 1717 does not provide a basis to award attorney's fees.

*Id.*, at 185. *See also In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980) (holding that the action was not "on the contract" where the bankruptcy court "did not adjudicate the validity of the note in determining whether the debt was dischargeable" and instead determined "that the debtors obtained the loan evidenced by the note through fraud");

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

*cf. In re Arciniega*, 2016 WL 455428 (B.A.P. 9th Cir. Feb. 3, 2016) (where the debtor used the subject agreement to support her defense and the bankruptcy court had to interpret a disputed phrase in the agreement in connection with an action under § 523(a)(2)(A) and (a)(6), the action was "on a contract"); and *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (finding an action was "on a contract" where "the bankruptcy court needed to determine the enforceability of the settlement agreement to determine dischargeability").

Here, as in *Bos*, the contract issues were previously decided by the state court, as set forth in the Phase One Judgment. This Court was presented with one issue: whether Defendant committed fraud in connection with the execution of the Agreement. To adjudicate this issue, the Court did not need to assess the validity or enforceability of any provision in the Agreement. Neither Plaintiff nor Defendant disputed any provision in the Agreement during the course of this adversary proceeding; the Complaint focused on representations and omissions allegedly made by Defendant in connection with entering into the Agreement but did not dispute the validity of the Agreement. The Answer also did not raise any affirmative defenses that called into question any provision in the Agreement. As such, this case is more similar to *Bos*, *Zarate* and *Fulwiler*, and is easily distinguishable from the contract enforcement issues presented to the *Arciniega* and *Baroff* courts.

Although, unlike *Bos*, where the state court had liquidated all damages prior to the dischargeability action, Plaintiff did request this Court to liquidate the fraud damages on top of determining dischargeability of the debt, liquidation of damages did not prevent the *Zarate* court from holding that the action was a tort action, not one "on a contract." In fact, that Plaintiff requested monetary damages as opposed to, for example, rescission of the Agreement strengthens the Court's finding that this action was not an action "on a contract." In *Hardisty v. Moore*, 2015 WL 6671557 (S.D. Cal. Nov. 2, 2015), the court noted that, under California law, "[f]raud (in the form of intentional misrepresentation) may provide a basis for a remedy in either a tort action or in a contract action." *Hardisty*, 2015 WL 6671557 at \*3 (quoting *Star Pac. Invs., Inc. v. Oro Hills Ranch, Inc.*, 121 Cal.App.3d 447, 461 (Ct. App. 1981)). The court continued:

When a plaintiff contracts in reliance upon the fraud of a defendant, the plaintiff "may elect either the contract remedy, consisting of restitution

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

based on rescission or the tort remedy, by affirming the contract and seeking damages." *Id.* Thus, "where the plaintiff's claim ... seeks rescission based on fraud, the courts have concluded such claim does sound in contract and permits the award of fees," *Super 7 Motel Assocs.*, 16 Cal.App.4th at 549, 20 Cal.Rptr.2d 193, but where a plaintiff seeks money damages for the fraud, courts have concluded such a claim does not sound in contract and no fee award is permitted, *In re Baroff*, 105 F.3d 439, 443 (9th Cir.1997). "An action to avoid or rescind an agreement because of fraudulent inducement ... is an action on a contract within the meaning of section 1717." *In re Baroff*, 105 F.3d at 443 (citing *Star Pac. Invs., Inc.*, 121 Cal.App.3d at 461, 176 Cal.Rptr. 546); *see also In re Penrod*, — F.3d —, 2015 WL 5730425, at \*3 (an action is "on a contract" when a party seeks to "avoid enforcement" of the provisions of the contract); *Exxess Electronixx v. Heger Realty Corp.*, 64 Cal.App.4th 698, 710–11, 75 Cal.Rptr.2d 376 (1998) (an action "that seeks to establish the parties' rights under a contract is an action sounding in contract").

*Id.* Here, Plaintiff never requested rescission of the Agreement based on fraud. Rather, at all times, Plaintiff requested monetary damages. Given that this Court did not adjudicate any enforcement or validity issues related to the Agreement, and because Plaintiff requested tort damages, this action is not an action "on the contract" for purposes of Cal. Civ. Code § 1717.

***B. CCP §§ 1021 and 1032***

Although Defendant is not entitled to attorneys' fees pursuant to Cal. Civ. Code § 1717, Defendant is entitled to attorneys' fees through CCP § 1021 based on the language in the Agreement. Pursuant to CCP § 1021—

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Pursuant to CCP § 1032(b)—

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Under CCP § 1033.5(a), the following items are allowable as costs pursuant to § 1032:

(10) Attorney's fees, when authorized by any of the following:

- (A) Contract.
- (B) Statute.
- (C) Law.

CCP "§ 1032(b) entitles a 'prevailing party' to 'recover costs' as a matter of right 'in any action or proceeding.' Costs may include attorney's fees when authorized by contract, even when the action is not 'on a contract.'" *In re Mac-Go Corp.*, 541 B.R. 706, 715 (Bankr. N.D. Cal. 2015) (citing CCP § 1033.5(a)(10)).

***i. The Language of the Agreement***

Here, the relevant provision in the Agreement states: "In the event that Contractor prevails in *any reference proceeding or court action arising out of this Agreement* or the enforcement or breach thereof...whether the same proceeds to judgment or not, Subcontractor agrees to pay to Contractor reasonable attorneys' fees." Agreement, ¶ 23 (emphasis added). If this language encompasses tort actions as well as contract actions, then Defendant, as the prevailing party (discussed below), is entitled to collect reasonable attorneys' fees from Plaintiff.

Several California courts have held that the phrase "arising out of" is broad enough to encompass both tort and contract actions. In *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 1341 (Ct. App. 1992), the plaintiffs filed suit against the defendants, alleging negligence, products liability, fraud and misrepresentation and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

breach of contract. *Xuereb*, 3 Cal.App.4th at 1341. The allegations in the complaint involved a real estate purchase agreement through which the defendants, a real estate broker and real estate agent, sold real estate to the plaintiffs. *Id.*, at 1340. In relevant part, the plaintiffs alleged that the defendants omitted information or made misstatements prior to the execution of the purchase agreement. *Id.*, at 1343. The purchase agreement included the following attorneys' fees provision: "Attorneys' Fees: If this Agreement gives rise to a lawsuit or other legal proceeding between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover actual court costs and reasonable attorneys' fees in addition to any other relief to which such party may be entitled." *Id.*

Eventually, the action went to trial on the theories of negligence, breach of fiduciary duty, concealment and misrepresentation, but not on breach of contract. *Id.*, at 1341. The jury returned a verdict in favor of the plaintiffs, who then moved for an award of attorneys' fees pursuant to the purchase agreement. *Id.* The trial court denied the plaintiffs' motion, holding that the plaintiffs were not entitled to attorneys' fees under Cal. Civ. Code § 1717. *Id.* The plaintiffs appealed. *Id.*

On appeal, the California appellate court first noted that Cal. Civ. Code § 1717 did not govern the issue of attorneys' fees because the action was not an action "on a contract" as required by Cal. Civ. Code § 1717. *Id.*, at 1342. Instead, the court found that the relevant statute was CCP § 1021, which allows for an award of attorneys' fees in tort actions if the language in the parties' agreement is broad enough to provide for such an award. *Id.* In assessing the language of the attorneys' fees provision in the purchase agreement, the court was faced with facts significantly analogous to the facts before the Court:

The critical question, under the language of the parties' attorney fees agreement, is whether respondents' lawsuit *arose from* the Purchase Agreement. Appellants argue that the phrase "[i]f this Agreement *gives rise to* a lawsuit or other legal proceeding" (our italics) must be interpreted in a transactional sense; that is, in the sense that the litigation has arisen from the entirety of the circumstances of the real estate transaction of which the Purchase Agreement was the defining statement. Respondents, on the other hand, contend that their dispute with appellants cannot be said to have arisen from the Purchase

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

Agreement, because the alleged actions, omissions, or misstatements with which that dispute was concerned, all occurred prior to the execution of the Purchase Agreement. In short, respondents focus on the chronology of the events in relation to the actual execution of the Purchase Agreement, while appellants more broadly address the entire transaction, of which the Purchase Agreement was the written memorandum.

*Id.* The court held that the action could properly be regarded "as having arisen from" the purchase agreement even under the defendants' narrower interpretation of the language, because the purchase agreement provided for certain inspections after the signing of the agreement, which inspections were allegedly deficient and partly formed the basis of the plaintiffs' lawsuit against the defendants. *Id.*, at 1343-44. However, the court held that the plaintiffs' broader interpretation of the language was accurate:

In any case, we must apply the rule that words in a contract are to be understood in their usual sense. (Civ. Code, § 1644.) In our opinion, appellants' interpretation more fairly reflects the ordinary and usual sense of the phrase "gives rise to," which the parties agreed to in the Purchase Agreement. In ordinary popular speech, as well as in legal opinions, it is common to use the phrase "arises from" or "arises out of" in a far more general, transactional sense than is suggested by phrases such as "derives from" or "proximately caused by."

*Id.*, at 1344. The *Xuereb* court also believed this interpretation was strengthened by the circumstances under which the parties entered into the purchase agreement:

Appellants' interpretation is also buttressed by the interpretational principle that a contract must be understood with reference to the circumstances under which it was made and the matter to which it relates. (Civ. Code, § 1647.) The circumstances of the Purchase Agreement and the matter to which it related was a large real property transaction, in which the buyer and the seller made certain reciprocal agreements with respect to the inspection of the premises and a variety of contingencies which were supposed to take place prior to the close

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

of escrow. It was out of these contingencies, or the alleged failure thereof, that the lawsuit arose. The attorney fees provision specifically included the "Agent" among the parties with respect to which disputes could arise that would trigger a right to attorney fees. In light of all these circumstances, we conclude that the phrase "gives rise to" must be interpreted expansively, to encompass acts and omissions occurring in connection with the Purchase Agreement and the entire transaction of which it was the written memorandum.

*Id.*

Several courts post-*Xuereb* have afforded the same broad interpretation to attorneys' fees provisions if the contract includes language that states attorneys' fees are awarded when an agreement "gives rise to" an action or an action "arises out of" an agreement. For instance, in *Lerner v. Ward*, 13 Cal.App.4th 155 (Ct. App. 1993), the plaintiffs sued the defendants for falsely representing that the real property they purchased from the defendants could be subdivided. *Lerner*, 13 Cal.App.4th at 157. The purchase agreement included an attorneys' fees provision awarding attorneys' fees to the prevailing party on any action "arising out of the agreement." *Id.*, at 160. Although the complaint initially included causes of action for breach of contract and reformation, the court held trial only on the plaintiffs' fraud cause of action. *Id.* The jury returned a verdict in favor of the defendants, who then moved for an award of attorneys' fees. *Id.* The trial court denied the motion, holding that the fees were not recoverable in a tort action under Cal. Civ. Code § 1717. *Id.*, at 158. The defendants appealed the ruling. *Id.*

The appellate court agreed that the defendants were not entitled to attorneys' fees under Cal. Civ. Code § 1717 because the fraud action was not "on a contract." *Id.*, at 159. However, the court found that the defendants were entitled to fees pursuant to CCP § 1021. Citing the reasoning in *Xuereb*, the court held:

In the instant case, the clause in the contract concerning attorney fees was similar to the clause in the *Xuereb* case. The clause was not limited merely to an action on the contract, but to any action or proceeding arising out of the agreement. This included any action for fraud arising out of that agreement.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

It is true when the Lerner voluntarily dismissed their contract cause of action before trial and proceeded only on a tort theory, they gave up the opportunity to obtain attorney fees pursuant to Civil Code section 1717. They still, however, had the opportunity to obtain attorney fees pursuant to Code of Civil Procedure section 1021. This is because the tort cause of action arose out of the written agreement. The Lerner alleged and tried to prove that the Ward, through their fraudulent representations, induced the Lerner to enter into an agreement to purchase the property.

*Id.*, at 160.

Notably, the California Supreme Court cited approvingly to *Xuereb* and *Lerner* in another action involving a real estate purchase agreement containing the following attorneys' fees provision: "In the event legal action is instituted by the Broker(s), or any party to this agreement, *or arising out of the execution of this agreement or the sale*, or to collect commissions, the prevailing party shall be entitled to receive from the other party a reasonable attorney fee to be determined by the court in which such action is brought." *Santisas v. Goodin*, 17 Cal.4th 599, 603 (1998) (emphasis added). The issues in *Santisas* were different, centering mainly on a "prevailing party" analysis, but the California Supreme Court, referencing *Xuereb* and *Lerner*, did note that the language in the agreement was broad enough to cover both contract and tort actions:

On its face, the provision embraces all claims, both tort and breach of contract, in plaintiffs' complaint, because all are claims "arising out of the execution of th[e] agreement or the sale." (See *Lerner v. Ward* (1993) 13 Cal.App.4th 155, 160–161, 16 Cal.Rptr.2d 486.) Plaintiffs do not argue otherwise. If a contractual attorney fee provision is phrased broadly enough, as this one is, it may support an award of attorney fees to the prevailing party in an action alleging both contract and tort claims: "[P]arties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract." (*Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1341,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**  
5 Cal.Rptr.2d 154.)

**Chapter 7**

*Id.*, at 405. *See also Zarate*, 567 B.R. at 183 (holding that provisions that limit collection of fees to actions to "enforce" or "interpret" an agreement do not give rise to tort actions, but "provisions with broader language – suits *arising from* or with respect to the subject matter or enforcement of a contract – have been held to extend to fees incurred in litigating tort claims") (emphasis added); *Maynard v. BTI Grp., Inc.*, 216 Cal.App.4th 984, 993 (Ct. App. 2013) ("Like provisions referring to any claim 'in connection with' a particular agreement, *or to any action 'arising out of' an agreement*, an attorney fee provision awarding fees based on the outcome of 'any dispute' encompasses all claims, whether in contract, tort or otherwise.") (emphasis added); *and Childers v. Edwards*, 48 Cal.App.4th 1544 (1996) (holding that attorneys' fees provision stating that "any legal action, proceeding or arbitration *arising out of this agreement*" would provide the prevailing party to reasonable attorneys' fees encompasses tort actions) (emphasis added).

Here, like in *Lerner*, this Court adjudicated Plaintiff's fraud claim under 11 U.S.C. § 523(a)(2)(A). Because the Court only tried a tort claim, Defendant is not entitled to attorneys' fees under Cal. Civ. Code § 1717, as explained above. However, as in *Xuereb* and *Lerner*, the language in the Agreement is broad enough to encompass this action. The parties' Agreement explicitly provides for attorneys' fees in "any reference proceeding or court action *arising out of this Agreement.*" Agreement, ¶ 23 (emphasis added). The "arising out of" language in the Agreement mirrors the language in the attorneys' fees provision in *Lerner* and is the exact same phrase held by several courts to be broad enough to encompass tort actions.

The crux of Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) was that Defendant made material misrepresentations and omissions on which Plaintiff relied prior to execution of the Agreement. A necessary element of Plaintiff's fraud theory was that Plaintiff would not have entered into the Agreement had Plaintiff been aware of certain facts prior to execution of the Agreement. Both *Xuereb* and *Lerner* held that the fraudulent inducement allegations at issue in their cases arose out of the subject agreements. The same is true here; the entirety of Plaintiff's tort action against Defendant rested on the premise that Plaintiff would not have entered into the Agreement had Defendant disclosed certain facts, such as T.O.'s license status and the age of the as-built survey. Plaintiff asserted that Defendant had a duty to disclose these facts in connection with a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

subcontract agreement.

The *Xuereb* court's interpretation of the phrase "arising out of" did not depend on the additional circumstances surrounding the execution of the purchase agreement, but the court believed the circumstances "buttressed" the interpretation. *Xuereb*, 3 Cal.App.4th at 1344. Multiple courts following *Xuereb* did not engage in any such analysis, instead simply holding that the phrase "arising out of" is broad enough to encompass tort actions involving the subject agreement. *See Maynard*, 216 Cal.App.4th at 993; *Childers*, 48 Cal.App.4th at 1548. As in *Xuereb*, the circumstances here serve to strengthen the Court's interpretation of the attorneys' fees provision in the Agreement.

In *Xuereb*, the court found that both parties "made certain reciprocal agreements" with respect to the real property transaction to which the purchase agreement related. *Id.* The court stated that the tort action arose out of these contingencies. *Id.* As in *Xuereb*, the circumstances surrounding the Agreement also indicate that Plaintiff's fraud claim under 11 U.S.C. § 523(a)(2)(A) "arose out of" the Agreement. Here, both Plaintiff and Defendant made similar reciprocal agreements in the Agreement regarding the contracting work to be done on the subject property. Plaintiff's fraud claim was based on its contention that Defendant was obligated to disclose the license status of T.O and the age of the surveys on which Plaintiff relied. The Agreement explicitly includes a provision regarding licensing of contractors, Agreement, ¶ 21, as well as a provision providing for Plaintiff's review of "contract documents," which, according to Exhibit A to the Agreement, includes the plans. Agreement, ¶ 3.

It is unclear if Defendant is requesting attorneys' fees related to litigation of Plaintiff's claim under 11 U.S.C. § 727. In the Motion, Defendant appears to except fees and costs incurred during the 11 U.S.C. § 727 trial from his request. Motion, p. 6. However, Defendant includes attorneys' fees incurred litigating Plaintiff's claim under 11 U.S.C. § 727 in his attached itemization of attorneys' fees. To the extent Defendant is requesting attorneys' fees incurred defending the denial of discharge claims, Plaintiff's claims under § 727 were based on the omission of assets from Defendant's bankruptcy schedules and statements. These allegations were entirely unrelated to the Agreement, and Plaintiff could have brought the claims under 11 U.S.C. § 727 notwithstanding the Agreement. In other words, the denial of discharge claims did not "arise out of" the Agreement, and Defendant is not entitled to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

attorneys' fees incurred defending the § 727 claims. However, for the reasons set forth above, Defendant *is* entitled to attorneys' fees incurred defending Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A).

***ii. Prevailing Party***

Plaintiff also argues that Defendant cannot be a prevailing party because Plaintiff prevailed in state court. Pursuant to CCP § 1032(a)(4)—

"Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

"Where a party falls squarely within one of these four definitions, a trial court has little discretion in determining the prevailing party, particularly when there is a party with a 'net monetary recovery.'" *Mac-Go Corp.*, 541 B.R. at 715 (citing *Goodman v. Lozano*, 47 Cal.4th 1327 (2010)). Otherwise, the statute "leaves the determination of the prevailing party to the trial court's discretion." *Heimlich v. Shivji*, 12 Cal.App.5th 152, 160 (Ct. App. 2017).

"[S]ection 1032(a)(4) defines the party with a 'net monetary recovery' as the 'prevailing party.' The word 'recover' means 'to gain by legal process' or 'to obtain a final legal judgment in one's favor.'" *deSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal.4th 1140, 1153 (2016) (citing *Goodman v. Lozano*, 47 Cal.4th 1327, 1334 (2010)).

Plaintiff asserts that Defendant cannot be the prevailing party because Plaintiff was the prevailing party on the breach of contract action in state court. However, Plaintiff has cited no authority providing that where one party prevails in one action and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

recovers attorneys' fees based on the parties' contract, the other party is barred from recovering attorneys' fees based on the contract in all future actions. Plaintiff did prevail on its breach of contract action in state court, and the state court awarded Plaintiff attorneys' fees as a result. This Court cannot relitigate the breach of contract action or question the state court's award of attorneys' fees to Plaintiff, nor does this Court attempt any such attack on the state court's judgments and findings.

This nondischargeability action is separate and distinct from the state court action. The state court has not made any findings related to fraud or nondischargeability, such that none of the state court's determinations bind this Court in this proceeding. In this action, Defendant is the prevailing party because Defendant "falls squarely" within one of the "prevailing party" definitions under CCP § 1032(a)(4): Defendant is "a defendant as against those plaintiffs who do not recover any relief against that defendant." Where a party fits a definition provided by CCP § 1032(a)(4), the Court "has little discretion" in deeming that party the prevailing party. *Mac-Go Corp.*, 541 B.R. at 715.

Even if Defendant did not neatly fall into one of the categories under CCP § 1032(a)(4), the Court is given discretion to determine the prevailing party and allow costs as the Court sees fit. CCP § 1032(a)(4); *Heimlich*, 12 Cal.App.5th at 160. To the extent Plaintiff views the state court action and this action as one action, where Plaintiff prevailed on the breach of contract claims and Defendant on the fraud and nondischargeability claims, the Court would still award Defendant his attorneys' fees and costs incurred defending the § 523(a)(2)(A) claim. Plaintiff already obtained a significant attorneys' fees award of \$1.65 million after prevailing on its breach of contract claims. Now that Defendant has prevailed on the nondischargeability claim, and in light of the fact that courts are permitted to "apportion costs between the parties," Defendant is entitled to his share of attorneys' fees under the Agreement. Consequently, Defendant being the prevailing party as to Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A), Defendant is entitled to an award of reasonable attorneys' fees and costs.

***C. Reasonableness of Fees***

Movants bear the burden of proving that the fees sought are reasonable. *Center for Biological Diversity v. Cty. of San Bernardino*, 188 Cal.App.4th 603, 615 (Ct. App.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

2010); *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). Both California state courts and the Ninth Circuit Court of Appeals customarily assess the reasonableness of attorneys' fees utilizing the "lodestar" approach where the number of hours reasonably expended is multiplied by a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006).

"A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "After computing the lodestar, the court must assess whether additional considerations require adjustment of the figure, such as the novelty or complexity of the issues, the skill and experience of counsel, the quality of representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at \*4.

Although Defendant is a prevailing party entitled to attorneys' fees and costs, those fees and costs must be reasonable. In the Forsley Declaration, Defendant's attorney testifies that Defendant incurred attorneys' fees and costs totaling \$53,547.25 "[u]p to the first trial" pertaining to Plaintiff's claims under 11 U.S.C. § 727. Forsley Declaration, ¶ 30. As noted above, Defendant is not entitled to the attorneys' fees and costs incurred defending the denial of discharge claims. As such, the Court will deny this portion of the request.

Mr. Forsley states that Defendant incurred \$95,904.42 in fees and \$1,062.22 in costs to defend from Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). Forsley Declaration, ¶ 34. Mr. Forsley also anticipates incurring \$3,400 to file a reply to the Opposition and to appear at the hearing on the Motion. Forsley Declaration, ¶ 35. Mr. Forsley's rate is \$425 per hour, which is reasonable for an attorney in Los Angeles with Mr. Forsley's experience. *Id.*

The itemized fee statements attached by Mr. Forsley include entries related to defending both the § 727 and § 523 claims. Even if the Court were to deduct the \$53,547.25 incurred up to December 2014 (when the Court entered judgment on the § 727 claim), subsequent entries include Defendant's work defending the appeal of the § 727 judgment. Moreover, Defendant includes a substantial amount of redacted entries, which render impossible a determination of reasonableness. Defendant should

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Darin Davis**

**Chapter 7**

supplement the Motion with a declaration attaching an itemized statement of fees and costs that includes *only* fees and costs incurred defending the § 523(a)(2)(A) action. The supplemental attachment also should modify the redactions to allow the Court to assess whether the task performed was necessary and if the time spent on the task was reasonable.

***D. Plaintiff's Request for Sanctions***

In the Opposition, Plaintiff requests sanctions under FRBP 9011 on the basis that Defendant filed the Motion without a proper basis and for an improper purpose, and because Defendant is aware Plaintiff has appealed the Court's Decision. Notwithstanding the fact that Plaintiff's request for sanctions is procedurally improper, *see* FRBP 9011(c)(1)(A) (requiring a motion under FRBP 9011 be made separately from other motions), the facts here do not warrant an award of sanctions. First, Plaintiff has not sought a stay of the Court's Decision pending appeal. Thus, the appeal does not prevent Defendant from moving for an award of attorneys' fees. Moreover, because the Court is granting Defendant's request for attorneys' fees in part, the Motion was not filed without sufficient grounds or for an improper purpose. Consequently, Plaintiff's request for sanctions is denied.

**III. CONCLUSION**

The Court will grant the Motion in part and award Defendant reasonable attorneys' fees and costs incurred litigating Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). Defendant must file and serve a supplemental declaration attaching **only** the itemized attorneys' fees and costs incurred litigating the 11 U.S.C. § 523(a)(2)(A) claim. Defendant also must include enough information under each entry for the Court to ascertain whether the incurred fees and costs were reasonable. Plaintiff may file a response to the supplemental declaration ***only as to the reasonableness of the attorneys' fees and costs.*** Defendant may reply to any response by Plaintiff.

The Court will continue this hearing to **2:30 p.m. on October 17, 2018.**

**Party Information**

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By  
Ray B Bowen JR

**Trustee(s):**

David Seror (TR)

Represented By  
Richard K Diamond (TR)  
Robert A Hessling  
Robert A Hessling  
Michael G D'Alba  
Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

**#24.00** Plaintiff's motion for summary judgment or, in the alternative,  
partial summary judgment

fr. 10/3/18

Docket 40

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

**A. *The Parties' Plan for a Charity Concert***

In December 2015, Peace For You Peace For Me (the "Foundation"), a nonprofit organization registered under the laws of Bulgaria, contemplated organizing a charity concert to raise money for and awareness of homeless and displaced children from conflict zones worldwide (the "Charity Concert"). Declaration of Jay Botev ("Botev Declaration") [doc. 41], ¶ 2. The Foundation envisioned the Charity Concert as an all-day, televised concert held in Sofia, Bulgaria on October 1, 2016 and modeled off popular events such as 1985's Live-Aid and 2010's Hope for Haiti Now. Botev Declaration, ¶ 3. Around mid-2016, Krasimir Dachev became involved with the Charity Concert and, through his company, Svilosa AD ("Svilosa"), financially sponsored the Foundation. Botev Declaration, ¶ 2.

In May 2016, an individual named Vee Vee Saint Clair introduced Robin DiMaggio ("Defendant") to the Foundation. Botev Declaration, ¶ 4. At that time, Defendant told Jay Botev, the founded and a board member of the Foundation, that Defendant was a well-known drummer and the "Musical Director of the United Nations." *Id.* Defendant further represented to Mr. Botev that he had toured and recorded with several music celebrities and emailed pictures of himself with these celebrities. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Defendant informed Mr. Botev that, through these connections, Defendant would be able to procure commitments from numerous celebrities to perform at the Charity Concert. *Id.* Given that no one at the Foundation was familiar with the American music industry, the Foundation relied on Defendant's representations about deals and negotiations within the industry. *Id.*

Defendant initially stated that he would work with Bruce Sterling, who operated a company called A.E.I. Entertainment ("AEI"), and Ms. Saint Clair to enlist artists to perform at the Charity Concert. Botev Declaration, ¶ 5. No one at the Foundation ever spoke with Mr. Sterling, and the Foundation did not authorize Defendant to make any payments to Mr. Sterling. *Id.* Three weeks after their initial meeting, Defendant and the Foundation dropped Mr. Sterling and Ms. Saint Clair from their correspondence. *Id.* Going forward, the Foundation dealt exclusively with Defendant. *Id.*

In June 2016, Defendant sent the Foundation an Artist Acquisition Roster (the "Roster"), which included the names of hundreds of well-known musicians worldwide. Botev Declaration, ¶ 6, Exhibit A. Defendant informed the Foundation that it could select any of the musicians listed in the Roster and that Defendant would work to secure their performance at the Charity Concert. *Id.*

***B. The Initial Deposits***

On June 7, 2016, the Foundation and Defendant, through his wholly-owned company DiMaggio International Inc. ("DMI"), signed an Engagement Binder through which the Foundation agreed to wire \$50,000 to DMI. Botev Declaration, ¶ 7, Exhibit B. The Engagement Binder included a provision that all artist fees paid to DMI would be applied to a different artist or returned if the original artist did not accept the offer to perform. *Id.*

On June 9, 2016, Defendant emailed Mr. Botev, among others, informing the Foundation that he received a "verbal Yes from Mick Jagger" and that Defendant had "sent all the correct calls to bring in the Big boys." Botev Declaration, ¶ 8, Exhibit C. On June 11, 2016, Defendant again emailed Mr. Botev, among others, informing the Foundation that he also received a "verbal Yes" from Earth, Wind & Fire. Botev Declaration, ¶ 8, Exhibit D.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

On June 30, 2016, Defendant sent another email to Mr. Botev, informing Mr. Botev that Defendant recently spoke to his manager, business manager, production team and lawyers and that they all came to the conclusion that they would need the remaining balance of \$15,000 to move forward with securing artists. Botev Declaration, ¶ 9, Exhibit E. Defendant also warned Mr. Botev that failing to make the \$15,000 payment would be "extremely dangerous" for the parties' reputations and that, upon receiving the \$15,000 payment, Defendant could "lower the risk factor with [his] people." *Id.*

On July 7, 2016, Defendant forwarded an email to the Mr. Botev in which the sender, identified only as "J.F.," wrote to Defendant:

Here is who verbally confirmed as per your last email a few hours ago,  
J. Depp, SIR Mick Jagger, Rod Stewart, Slash, Bruno Mars, Justin  
Timberlake,  
Please remember these are Verbal Yes but not Contracted as of yet.  
Please be careful and make sure you fund before we send out Paper  
Agreement or All this is for nothing.

Botev Declaration, ¶ 11, Exhibit G. As a result, the Foundation approved wiring approximately \$41,000 to DMI's bank account. Botev Declaration, ¶ 10, Exhibit F.

Prior to the transfer of these funds from the Foundation to DMI, DMI's bank account had a balance of \$343.40. Declaration of Douglas R. Painter ("Painter Declaration") [docs. 43, 50], ¶ 14, Exhibit GGG, p. 272. From June 21, 2016 through July 7, 2016, Plaintiffs deposited a total of \$40,844 into DMI's account for the purpose of securing artists for the Charity Concert. *Id.*, pp. 272-75. Soon after each of these deposits, Defendant withdrew the funds from DMI's bank account. *Id.* Specifically, Plaintiffs deposited, and Defendant withdrew, the following sums:

Date	Deposit/Withdrawal	Amount
June 21, 2016	Deposit	\$9,960
June 27, 2016	Deposit	\$9,960
June 27, 2016	Withdrawal	\$17,286.86
June 28, 2016	Withdrawal	\$500

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

June 29, 2016	Withdrawal	\$240
June 30, 2016	Withdrawal	\$360
July 1, 2016	Withdrawal	\$40
July 5, 2016	Deposit	\$4,964
July 5, 2016	Withdrawal	\$13,800
July 7, 2016	Deposit	\$6,000

*Id.* From the initial deposit of \$40,844, Defendant withdrew a total of \$32,226.86. *Id.* Aside from withdrawing the \$32,226.86, Defendant used DMI's debit card to make several purchases at gas stations, groceries and convenience stores, coffee shops, pet stores, hardware stores, restaurants, home furnishing stores, hotels, mobile carrier stores, auto shops and movie ticketing websites. *Id.*

Soon after withdrawing the funds from DMI's bank account, Defendant made deposits into his personal checking account. Painter Declaration, ¶ 14, Exhibit GGG, pp.122-26. On June 27, 2016, Defendant deposited \$1,200 into his personal checking account and, on the same day, withdrew as cash \$391 from his personal account. *Id.* On July 5, 2016, Defendant deposited another \$13,216.47 into his personal checking account and, on the same day, withdrew a total of \$7,367.45 in cash. *Id.* Defendant also made several personal purchases with his personal debit card, including a \$1,319.51 telephone payment, several payments at restaurants and gas stations and a \$96 charge at TJ Maxx. *Id.* Defendant also used \$3,000 of the funds to pay his Barclays credit card. *Id.* Defendant used his Barclays credit card to make personal purchases for himself and his ex-wife, Marti Rich. Painter Declaration, ¶ 18, Exhibit KKK.

***C. The \$150,000 Deposit***

Subsequently, Defendant, through DMI, sent the Foundation an Artist Acquisition Invoice requesting deposits of \$100,000 to secure Mick Jagger and \$50,000 to secure Earth, Wind & Fire. Botev Declaration, ¶ 12, Exhibit H. Like the Engagement Binder, the Artist Acquisition Invoice included a provision that the funds would be applied to a different artist or returned to the Foundation if the artists were unavailable and did not accept the offer. *Id.* On July 14, 2016, in response to Defendant's request, the Foundation approved a wire of \$150,000 to DMI. Botev Declaration, ¶ 13, Exhibit I.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

On July 14, 2016, DMI received a \$149,955 deposit from Plaintiffs into its account. Painter Declaration, ¶ 14, Exhibit GGG, p. 275. Immediately after receiving the \$149,955 deposit, Defendant withdrew \$155,600 from DMI's account. *Id.* On the same day, Defendant deposited \$155,600 into his personal checking account. *Id.*, p. 126. Upon depositing the \$155,600 into his personal account, Defendant immediately made multiple cash withdrawals totaling \$62,853.18. *Id.* On July 15, 2016, the day after the transfer, Defendant made two payments to his Barclays credit card totaling \$13,136.23. *Id.* From July 15, 2016 through July 20, 2016, Defendant continued to withdraw substantial amounts of cash, totaling \$38,101.84. *Id.*, pp. 126-28. Defendant also continued to use his personal debit card for several personal expenses, including dining, car expenses, convenience store purchases and shopping at The Home Depot. *Id.*

The record is devoid of any evidence that Defendant used any of the funds deposited into DMI's account to secure Mick Jagger or Earth, Wind & Fire as performers at the Charity Concert. In fact, according to Chris Andrews, a talent agent employed with Creative Artists Agency ("CAA"), CAA was the "exclusive" talent agency representing Mick Jagger in 2016 and 2017. Declaration of Chris Andrews ("Andrews Declaration") [doc. 44], ¶ 2. On July 28, 2016, Mr. Andrews received an unsolicited email from "industrylevelssubmit@gmail.com" inquiring as to the availability of Mick Jagger to appear at a charity concert in Sofia, Bulgaria on October 1, 2016. Andrews Declaration, ¶ 3. Mr. Andrews did not respond to this solicitation. *Id.* On August 1, 2016, Mr. Andrews received another email from the same email address asking about Mick Jagger's availability on October 1, 2016. Andrews Declaration, ¶ 4. On the same day, Mr. Andrews responded to the email stating that Mick Jagger was not available to appear at the event. *Id.* According to Mr. Andrews, neither CAA nor any representative of Mick Jagger ever received deposits from Defendant, DMI, Mr. Sterling, AEI or any other entity attempting to secure Mick Jagger's performance at the Charity Concert. Andrews Declaration, ¶ 5.

In 2016 and 2017, CAA also was the exclusive talent agency representing Earth, Wind & Fire. Declaration of Brett Steinberg ("Steinberg Declaration"), ¶ 2. Neither CAA nor any other representative of Earth, Wind & Fire entered into any agreements to appear in Sofia, Bulgaria for the Charity Concert. Steinberg Declaration, ¶ 3. In addition, CAA does not have a record of any negotiations in 2016 or 2017 between

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Earth, Wind & Fire and Defendant, DMI, Mr. Sterling, AEI or any other entity attempting to secure Earth, Wind & Fire's performance at the Charity Concert. *Id.*

***D. The \$53,300 Deposit***

In early July 2016, the Foundation arranged a press conference in Sofia, Bulgaria to publicize the Charity Concert. Botev Declaration, ¶ 14; Declaration of Alexander Panev ("Panev Declaration"), ¶ 2. After the press conference, local press reacted with skepticism to the suggestion that the Charity Concert would be ready in time for the October 1, 2016 concert date. *Id.* After the press conference, Defendant, through DMI, sent the Foundation an invoice (the "Defamation Invoice") requesting \$53,300 to pay for "legal defamation PR," "legal attorney fees" and "administrative services." Botev Declaration, ¶ 14, Exhibit J; Panev Declaration, ¶ 2, Exhibit CC. The "legal defamation PR" fees referred to "fees for legal defamation [to] secure public relations for damage control due to false Media and public disclosed marketing towards artists that have not legally been acquired by there [sic] agency to perform" at the Charity Concert. *Id.*

On July 17, 2016, Alexander Panev, an associate and representative of Mr. Dachev, emailed Defendant to discuss the Defamation Invoice. Panev Declaration, ¶ 3, Exhibit DD. In the email, Mr. Panev also instructed Defendant to use the funds already wired to Defendant to finally secure the performances of Mick Jagger and Earth, Wind & Fire. *Id.* In response, Defendant requested an additional \$52,000 and stated that he could not secure Mick Jagger's performance without the additional funds. *Id.* Defendant also stated: "Let me know if you can't or won't I completely understand I will have to resign from the Venture and make a wire back to you. This is my Teams decision and we will not budge." *Id.*

On July 18, 2016, Mr. Panev responded to Defendant and informed Defendant that the Foundation had already paid \$150,000 to secure Mick Jagger and Earth, Wind & Fire as performers for the Charity Concert. *Id.* Mr. Panev told Defendant that Defendant could either secure the performers with the money he had or wire back the funds to the Foundation. *Id.* On the same day, Defendant emailed Mr. Panev and informed him that he would wire back the funds and that the Foundation should hire someone else to help organize the Charity Concert. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

Nevertheless, on July 21, 2016, the Foundation approved a wire of \$53,300 to DMI. Botev Declaration, ¶ 15, Exhibit K. On July 21, 2016, DMI received \$53,300 into its account. Painter Declaration, ¶ 14, Exhibit GGG, p. 275. Immediately after receiving these funds, Defendant withdrew \$53,251 from DMI's account. *Id.*

On July 21, 2016, Defendant deposited \$53,251 into his personal account, along with two deposits of \$267.51 and \$2,300. Painter Declaration, ¶ 14, Exhibit GGG, p. 128. From July 21, 2016 through August 8, 2016, Defendant made cash withdrawals totaling \$61,831.69. Painter Declaration, ¶ 14, Exhibit GGG, pp. 128-35. Defendant also continued to spend funds on personal expenses, including a \$2,732.40 charge described as "Classic Vacations," additional payments to Defendant's Barclays credit card, multiple expenses at Starbucks, a \$266 payment to Los Angeles Superior Court's Traffic Department, a \$509.03 charge at a restaurant, a \$397.20 charge from Delta Airlines, numerous grocery store, convenience store and gas station expenses, a \$305.16 charge at GameStop, several charges at chocolatiers and clothing stores and multiple charges at Four Seasons hotels. *Id.* Defendant also made a \$18,358.88 payment to his American Express credit card. Painter Declaration, ¶ 14, Exhibit GGG, p. 130.

***E. The \$750,000 Deposit***

Defendant continued to request additional funds from the Foundation and claimed he could secure additional artists. Botev Declaration, ¶ 16. On July 31, 2016, Defendant emailed Mr. Dachev to inform him of additional offers to perform at the Charity Concert. Panev Declaration, ¶ 4, Exhibit EE. In a series of emails, Defendant informed Mr. Dachev that, with Mr. Dachev's permission, Defendant could "green light" performances from Jennifer Lopez, Robbie Williams, Don Felder, Roger Waters and Pink! *Id.* In the same series of emails, Defendant also stated he had confirmation that Blondie and the Beach Boys would perform for \$250,000 each. *Id.*

On August 1, 2016, Defendant sent the Foundation a Deal Offer Form requesting a deposit of \$750,000 to secure Jennifer Lopez, Robbie Williams, Roger Waters, Don Felder, Christina Aguilera and John Legend. Panev Declaration, ¶ 5, Exhibit FF. The Deal Offer Form was on a letterhead bearing the name One Talent Agency and did not make any reference to Defendant or DMI. *Id.* The Deal Offer Form provided that the offer was set to expire on August 2, 2016, one day after the offer date. *Id.* The Deal

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Offer Form did not include a provision that the funds furnished by the Foundation would be returned to the Foundation if the artists were unavailable or did not agree to perform at the Charity Concert. Panev Declaration, ¶ 6.

On August 1, 2016, Mr. Panev emailed a letter from Mr. Botev to Defendant, in which Mr. Botev requested changes to the Deal Offer Form. Panev Declaration, ¶ 6, Exhibit GG. Specifically, Mr. Botev requested that the Deal Offer Form provide for One Talent Agency to be liable for their obligations in the Deal Offer Form and that the Deal Offer Form contain a provision that the funds would be returned to the Foundation in case any of the performances did not proceed as planned. *Id.*

On August 2, 2016, Defendant emailed Mr. Panev and noted that the Deal Offer Form would expire at 5:00 p.m. on August 2, 2016 and, upon expiration, the parties would "lose every artist[]." Panev Declaration, ¶ 7, Exhibit HH. Defendant continued—

He will need a signed copy and proof of wire.

I absolutely do not want to put pressure on you and Kris but making sure every details are met so both sides feel completely comfortable. We are about to make History in Sofia.

*Id.* Mr. Panev responded to Defendant, informing Defendant that the Foundation would not move forward unless the parties amended the Deal Offer Form to provide for a refund of the money paid by the Foundation in case of cancellation by an artist. *Id.* Defendant responded by writing, in relevant part—

If an artist does not commit yes 100% the money goes back to Dachev. There is no other way but to make things 100% right at this point.

*Id.* Defendant then promised to "track the production office down" and have them amend the Deal Offer Form. *Id.*

On August 3, 2016, Defendant emailed Mr. Dachev and Mr. Panev with the subject line "We are about to lose the deal read below." Panev Declaration, ¶ 8, Exhibit II. The email appeared to be a forward from someone named Neil Epstein from One Talent Agency. *Id.* In the email, Mr. Epstein wrote—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

I'm certain your [sic] aware your requests are unusual and management are having second thoughts... Please be aware that talent secures a date with a deposit before anymore negotiations continue...

There fore [sic] if theres [sic] any other requests or 3rd party requests...

We will have to close negotiations at this time... And pass on this event.

Theres [sic] many moving parts moving to [sic] fast... Management will be concern [sic] if we have more red flags concerning this booking...

Sorry but we never had these kinds of unusual requests...

*Id.* Subsequently, Defendant emailed Mr. Panev an amended Deal Offer Form (the "Amended Deal Offer") with the following language added—

If the Artist is not available or does not accept your offer, Artist fees will be applied towards another artist(s) or returned if the artist declines or has a cancelation of performance

Therefor [sic] Cancelation will constitute that the Purchaser responsibility to reimburse the Purchaser for full reimbursement of that specific Artist or Artist Fees.

Panev Declaration, ¶ 9, Exhibit JJ. In his response to the Amended Deal Offer, Mr. Panev informed Defendant that the Amended Deal Offer did not address all of the Foundation's concerns and requesting another amended draft. *Id.* Defendant agreed to make the changes, but also told Mr. Panev to "[s]end [the] wire so we dont [sic] lose them." *Id.*

On August 3, 2016, Mr. Panev emailed Defendant asking Defendant to send details about One Talent Agency to Mr. Panev, including One Talent Agency's registration

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

number, address, representatives, bank account and contacts. Panev Declaration, ¶ 10, Exhibit KK. In response, Defendant told Mr. Panev that, if the Foundation decided to pay One Talent Agency directly, the Foundation would incur "33% taxes" on top of the payment and that the Foundation should instead pay DMI. *Id.*

On August 4, 2016, one day later, Defendant sent a new agreement to Mr. Panev, this time with DMI as the party instead of One Talent Agency (the "DMI Agreement"). Panev Declaration, ¶ 11, Exhibit LL. The DMI Agreement provided for \$750,000 to be paid into DMI's escrow account to secure performances by Jennifer Lopez, Roger Waters, John Legend, Christina Aguilera, Robbie Williams and Don Felder. *Id.* Defendant did not explain to the Foundation why One Talent Agency was removed from the contract or how DMI would take over One Talent Agency's obligations. Panev Declaration, ¶ 11.

On August 4, 2016, Defendant again emailed Mr. Panev asking Mr. Panev to wire money to DMI's account and stating that "time is about to be against" the parties if Defendant does not show proof of payment. Panev Declaration, ¶ 12, Exhibit MM. On August 5, 2016, Defendant emailed Mr. Panev informing him that Defendant was "playing with Fire with management once again" and that the parties were "close to losing the deal." Panev Declaration, ¶ 13, Exhibit NN. In response, the Foundation informed Defendant that they would wire the \$750,000 if Defendant explicitly confirmed that he would establish an escrow account upon Defendant's return to Los Angeles on August 10, 2016 and if Defendant would not use the money until it landed in the escrow account. *Id.* In response, Defendant told the Foundation that he "agree[d] to both terms explicitly." *Id.* After the Foundation again asked Defendant if he agreed to immediately fulfil the conditions upon his return to Los Angeles, Defendant responded by stating: "I agree 100% Confirmed." *Id.*

In light of Defendant's agreement, the Foundation sent Defendant an amendment to the DMI Agreement which incorporated the conditions requested by the Foundation (the "DMI Amendment"). Panev Declaration, ¶ 13, Exhibit OO. Defendant responded as follows—

I am in the middle of Tasmania, there is no scanners. But on sun [I] will be able to sign whatever you need.  
Alex, stop delaying and asking for more.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Please send the wire as pro[m]ised last night by Kris, his word is immaculate towards me as Mine is towards him.

I am doing UN work right now and [I] already told all management funds were sent.

I'm going to ask you kindly one last time to please send proof of wire.

I have done everything Kris has asked.

And pre warned escrow would be open latest by the 12th.

No more emails

Its [sic] time to engage.

Thank you for respecting.

*Id.* Because of Defendant's representations that the agreements with several artists would be "lost" without the wire and based on Defendant's promise to open an escrow account, on August 5, 2016, the Foundation approved a wire of \$750,000 to DMI. Panev Declaration, ¶ 14.

On August 5, 2016, DMI received a \$750,000 deposit into its account. Painter Declaration, ¶ 14, Exhibit GGG, p. 277. Four days later, on August 9, 2016, Defendant withdrew \$750,000 from DMI's bank account. *Id.* On September 12, 2016, after using DMI's debit card to make additional purchases at restaurants, Defendant closed DMI's bank account. Painter Declaration, ¶ 14, Exhibit GGG, p. 277-79. At the time of closing, DMI had \$87 left in its bank account. *Id.*

On August 9, 2016, the day Defendant withdrew \$750,000 from DMI's bank account, Defendant deposited \$750,000 into his personal checking account. Painter Declaration, ¶ 14, Exhibit GGG, p. 135. On the same day, Defendant made a cash withdrawal of \$50,000. *Id.* Throughout the month of August, Defendant continued to make numerous cash withdrawals, totaling \$305,790.19. Painter Declaration, ¶ 14, Exhibit GGG, p. 135-43.

From the withdrawn \$305,790.19, Defendant transferred \$150,000 to an account in the name of Dimagic Entertainment ("Dimagic"), a company wholly owned by Defendant. Painter Declaration, ¶ 14, Exhibit GGG, p. 280; Painter Declaration, ¶ 22,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Exhibit OOO. Defendant formed Dimagic on July 29, 2016, eight days after receiving \$53,300 from Plaintiffs and one week before receiving the \$750,000 deposit from Plaintiffs. Painter Declaration, ¶ 22, Exhibit OOO. In a Statement of Information filed with California's Secretary of State, Defendant indicated that he is Dimagic's Chief Executive Officer, Secretary and agent for service of process. *Id.* Defendant did not list any other officers or directors. *Id.* Defendant's deposit of \$150,000 into Dimagic's account appears to be the first deposit into that account after Dimagic's formation. Painter Declaration, ¶ 14, Exhibit GGG, p. 280.

In August 2016, in addition to these cash withdrawals, Defendant also initiated an outgoing international wire transfer in the amount of \$914.72 and a domestic wire in the amount of \$251,370. Painter Declaration, ¶ 14, Exhibit GGG, pp. 136, 139. Defendant used the \$251,370 to purchase real property located at 23777 Mulholland Highway, #163, Calabasas, California 91302 (the "Mulholland Property") allegedly for his ex-wife, Ms. Rich. Painter Declaration, ¶ 25, Exhibit PPP. In fact, Defendant acknowledged at his deposition that he used the Foundation's money to purchase the Mulholland Property. Painter Declaration, ¶ 2, Exhibit TT, 319:2-7.

By this time, Defendant and Ms. Rich had been divorced for approximately four years. Painter Declaration, ¶ 2, Exhibit TT, 293:14-18. According to Defendant, he did not have a court ordered or other legal obligation to pay support or alimony to Ms. Rich. Painter Declaration, ¶ 2, Exhibit TT, 295:20-23. Nevertheless, Ms. Rich is listed as the buyer of the Mulholland Property. Painter Declaration, ¶ 25, Exhibit PPP. In addition, Defendant made several payments on the Mulholland Property, including to the development on which the Mulholland Property is located and for utilities and taxes. Painter Declaration, ¶¶ 26-28, Exhibits QQQ-SSS.

Aside from the cash withdrawals and the purchase of the Mulholland Property, Defendant also depleted the funds by using his debit card for personal expenses. Painter Declaration, ¶ 14, Exhibit GGG, pp. 135-43. In the month of August alone, Defendant made several "big ticket" purchases, such as \$3,400 at "Wrap Labs, Inc.," \$6,599.28 at Best Buy, \$8,639 on automotive expenses, \$3,436.53 at Cost Plus, \$1,698.44 at John Varvatos, \$6,401.22 at Guitar Center and DW Drums, \$818.99 at "Psychic Eye Book Shops," \$5,252 at "Archstone" and \$3,466.08 at VC Defense. *Id.* Defendant also made over \$19,000 in payments to several of his personal credit cards. *Id.* Defendant further exhausted the funds by spending money at restaurants, bars,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

clothing stores, liquor stores, coffee shops, airports, pet stores, music stores, grocery stores, hardware stores and jewelry stores. *Id.* The addition of \$750,000 to Defendant's checking account resulted in a balance of \$752,697.25 as of August 9, 2016. *Id.* By the end of August, Defendant had whittled down that sum to \$60,896.77. *Id.*

Defendant continued to spend the funds through September and October of 2016. Painter Declaration, ¶ 14, Exhibit GGG, pp. 146-66. During that time, Defendant withdrew a total of \$22,304.86 in cash from his account. *Id.* Defendant also continued to make several debit card purchases, including for dental care, phone bills, home furniture, clothing, hotels, air travel, electronics, restaurants and bars. *Id.* Starting on September 20, 2016, Defendant began occasionally depositing funds into his checking account. *Id.* At that time, Defendant deposited \$10,000 into his account; it is unclear if Defendant deposited previously withdrawn cash back into the account or if Defendant obtained the funds from a source other than Plaintiffs. *Id.* Prior to the \$10,000 deposit on September 20, 2016, Defendant had a balance of \$18,595.94 remaining in his account. *Id.*

Defendant continued to spend money and occasionally replenish funds. On November 30, 2016, after a deposit of \$24,700, the origin of which is unclear, Defendant's account reached a balance of \$26,125.31. *Id.* After that, Defendant slowly drained the account; by June 30, 2017, the last date of banking history available to the Court, the account contained only \$147.16.

In November 2016, Defendant made additional deposits into Dimagic's account. Painter Declaration, ¶ 14, Exhibit GGG, p. 283. After those deposits, which brought Dimagic's balance up to \$197,580.79, Defendant began making several withdrawals from Dimagic's account. *Id.* Beginning in December 2016, Defendant also began using Dimagic's debit card to make personal purchases at restaurants, coffee shops, retail stores, etc. Painter Declaration, ¶ 14, Exhibit GGG, pp. 285-86. From January 2017 through the petition date, Defendant continued to withdraw funds from Dimagic's account and use Dimagic's debit card for personal expenses. Painter Declaration, ¶ 14, Exhibit GGG, pp. 287-313. On the petition date, Defendant had \$68.66 left in Dimagic's account. Painter Declaration, ¶ 14, Exhibit GGG, p. 313.

***F. Plaintiffs' Demand for Repayment***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

On August 10, 2016, Defendant emailed Mr. Dachev, informing him that "an entire group of managers" felt that the Charity Concert should be postponed to December 1, 2016 "[b]ecause of the [M]ick Jagger incident." Panev Declaration, ¶ 15, Exhibit PP. Defendant continued—

However here are the 2 choices black and white.  
We speak we move it to Dec first weekend gives us more time or I get the deposits back and send you moneys back.

The other situation was the Agreement was until aug 3rd and I didnt [sic] get your signature to show them proof until the 4th or 5th.  
They dont [sic] operate the same way as they do in Europe for deadlines. For me it didnt [sic] matter but for the brokerage firm they took that as an insult.

*Id.* In response, Mr. Panev informed Defendant that if it was "impossible to manage [the Charity Concert] as planned," Defendant should inform the Foundation and return the funds to the Foundation. *Id.* Throughout this email chain, Mr. Panev continued to request that Defendant sign and return the DMI Amendment. *Id.*

On August 16, 2016, Defendant emailed Mr. Dachev informing him that managers representing Lenny Kravitz, Alicia Keys, Earth, Wind & Fire and Calvin Harris contacted Defendant asking why "idiots from Bulgaria" would prevent the Charity Concert from moving forward in December instead of October. Panev Declaration, ¶ 16, Exhibit QQ. After blaming the Foundation for the deals falling apart, Defendant informed the Foundation that there was nothing else Defendant could do to save the show. *Id.* In response to this email, the Foundation emailed Defendant stating: "Just for the record: still no Amendment despite... your promise; still no escrow account despite... the agreement and your promise; still no artist engaged despite... your promise and despite all that money we sent you." *Id.* The Foundation also asked Defendant to "wire all the money back immediately." *Id.* To this, Defendant emailed the Foundation stating he would wire the money back to the Foundation "[a]s soon as everyone returns the deposits." *Id.*

On August 24, 2016, the Foundation again emailed Defendant requesting a return of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

the funds deposited into DMI's bank account. Panev Declaration, ¶ 17, Exhibit RR. The next day, Defendant responded to the Foundation as follows—

I just talked to Kris last night and he knows we are keeping the funds until [Wednesday] when [I] have new contracts for June 1st. Please let me know if myself or you are mis communicating [sic]?

*Id.* Despite Defendant's contention that there were new contracts for June 2017, both Mick Jagger's and Earth, Wind & Fire's talent agents testified that neither artist had been secured for a June 2017 concert. Andrews Declaration, ¶ 5; Steinberg Declaration, ¶ 3.

On September 2, 2016, the Foundation sent another email to Defendant requesting a return of the funds and itemizing the deposits sent to the DMI's bank account. Panev Declaration, ¶ 18, Exhibit SS. On the same day, Defendant responded—

What are you talking about?  
The results were in [Wednesday].  
And he didn't tell me what he wanted,  
I sent deposits to Artists as agrees [sic].  
You guys are something else.  
Is there that much of a communication break down [sic]?  
Or is your English that bad?  
And I'm simply not understand [sic] you?

*Id.* In response, the Foundation informed Defendant that "[i]f [he has] sent the deposits to Artists [he has] done it without Mr. Dachev's consent." *Id.* To date, Defendant has not returned any of the funds deposited into DMI's bank account. Panev Declaration, ¶ 18.

***G. Additional Expenses Incurred by Plaintiffs***

In addition to the Foundation's transfer of funds detailed above, the Foundation also paid Defendant \$5,000 in travel expenses and \$4,000 in cash to fund Defendant's trip to Sofia, Bulgaria. Botev Declaration, ¶¶ 18, 32, Exhibit BB. The Foundation also incurred additional out-of-pocket expenses in preparation for the Charity Concert.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Botev Declaration, ¶ 18. These expenses included: (A) \$5,185 to Virgin Records, Ltd./Abbey Road Studios for use of a music studio; (B) \$6,675 to Dimiter Marinov, who was hired to be one of the masters of ceremony at the Charity Concert; (C) \$2,500 to T-YPO Talent Agency to secure Neve Gachev as one of the masters of ceremony; (D) \$2,374 to a composer of a song to be performed at the Charity Concert; (E) \$13,822 to Studio Blend for 3D mapping and graphic design for the Charity Concert; (F) \$11,519 to Dinacord for scene design, sound engineering, lights and additional logistics for the Charity Concert; (G) \$3,643 to Kamen Kamenov for accounting services for the Charity Concert; (H) \$83,102 to secure National Levski Stadium as the venue for the Charity Concert; (I) \$15,870.08 to The New Act to secure flight tickets for the Charity Concert; (J) \$3,800 to the Grand Hotel Sofia for accommodations in connection with the Charity Concert; (K) \$671 to the Central Park Hotel for accommodations in connection with the Charity Concert; and (L) \$2,142 to Sky Fly for flight tickets for the Charity Concert. Botev Declaration, ¶¶ 18-19, 22-31, Exhibits N-O, R-AA.

In his declaration, Mr. Botev also states that the Foundation paid Ms. Saint Clair \$96,030 to secure Bob Geldof, Rick Astley and Matt Lawrence for the Charity Concert as well as for catering and other expenses. Botev Declaration, ¶ 20, Exhibit P. Mr. Botev also testified that the Foundation paid \$25,000 to an individual named Krassimir Kourtev, but did not explain how this payment was used in preparation for the Charity Concert. Botev Declaration, ¶ 21, Exhibit Q. The attached invoice to Mr. Kourtev does not provide additional clarification. *Id.*

***H. The State Court Action***

Prepetition, Plaintiffs sued Defendant and DMI in state court (the "State Court Action"). SUF, ¶ 25; Painter Declaration, ¶ 1. In connection with the State Court Action, DMI filed a countercomplaint against Plaintiffs and attached purported emails between Mr. Dachev and Defendant (the "State Court Emails"). Painter Declaration, ¶ 4, Exhibit VV. In the email exchange, Mr. Dachev appears to agree that Defendant should keep the funds wired by Plaintiffs to DMI and to apply the funds towards securing performances for a June concert. *Id.*

During the State Court Action, Defendant also claimed that he sent \$600,000 of Plaintiffs' money to Mr. Sterling. SUF, ¶ 26; Painter Declaration, ¶ 6, Exhibit XX. To

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

support his claim, Defendant produced a receipt for a \$600,000 bank check dated July 14, 2016 and made payable to AEI, Mr. Sterling's company. *Id.* In addition, Defendant produced bank records indicating that, as of July 14, 2016 (just before Defendant alleged he issued a \$600,000 check to AEI), DMI had \$715,662.41 in its bank account. SUF, ¶ 27; Painter Declaration, ¶ 8, Exhibit ZZ.

Plaintiffs hired a forensic analyst named Bruce Pixley to investigate the State Court Emails and Defendant's banking records. Painter Declaration, ¶ 5, Exhibit WW. After completing his investigation, Mr. Pixley filed a declaration with the state court in support of a motion for terminating sanctions filed by Plaintiffs against Defendant (the "Pixley Declaration"). *Id.* In the Pixley Declaration, Mr. Pixley noted several issues with the State Court Emails that led to Mr. Pixley doubting the authenticity of the State Court Emails. *Id.* Specifically, Mr. Pixley found the following discrepancies:

- A. One of the emails did not contain a space between the month and date of the time stamp despite the other auto-generated time stamps from Defendant's email server having a space between the month and date entries;
- B. The email also included a space between the "date" line and the "to" line, which the other auto-generated emails did not include;
- C. An email allegedly sent by Mr. Dachev included a "date" field using the U.S. style of date designation instead of the Bulgarian style present in other emails from Mr. Dachev;
- D. The purported email from Mr. Dachev contains underlined text, which is not consistent with the other emails drafted from Mr. Dachev.

*Id.* In addition, Mr. Pixley stated in his declaration that the State Court Emails did not come up in a search of Defendant's email account. *Id.*

Mr. Pixley and Plaintiffs also investigated Defendant's banking records. SUF, ¶¶ 26-27. After receiving the records, Plaintiffs found a copy of a check bearing the same serial number, date and payee as the \$600,000 check purportedly sent to Mr. Sterling. SUF, ¶ 26; Painter Declaration, ¶ 7, Exhibit YY. In contrast to the check

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

Defendant produced, the actual check reflected a \$10,000 payment, not a \$600,000 payment. *Id.* Plaintiffs also obtained DMI's account statement for July 2016. SUF, ¶ 27; Painter Declaration, ¶ 9, Exhibit AAA. Despite Defendant's produced copy of the statement showing \$715,662.41 in DMI's account as of July 14, 2016, the account statement produced by the bank reflected an account balance of only \$662.41. *Id.* Additionally, the July 2016 statement did not show a \$600,000 withdrawal on July 14, 2016. *Id.*

***I. Defendant's Bankruptcy Case and this Adversary Proceeding***

On September 12, 2017, Defendant filed a voluntary chapter 7 petition. On September 25, 2017, Defendant filed his schedules and statements [Bankruptcy Docket, doc. 9]. On November 29, 2017, Plaintiffs filed a complaint against Defendant, requesting denial of Defendant's discharge and nondischargeability of the debt owed to Plaintiffs. In connection with this adversary proceeding, on May 1, 2018, Plaintiffs deposed Defendant about, among other things, Defendant's representations in his petition, schedules and statements. Painter Declaration, ¶ 2, Exhibit TT.

For instance, in his schedule A/B, Defendant scheduled an interest in DMI, but did not list Dimagic. In response to item 27 of his Statement of Financial Affairs ("SOFA"), which called for Defendant to list any businesses he owned, Defendant listed DMI, but did not make any reference to Dimagic. During his deposition, Defendant testified that Dimagic did not have any assets. Painter Declaration, ¶ 2, Exhibit TT, 282:2-5. Defendant also testified that Dimagic was a new entity. *Id.* As of the petition date, Dimagic had \$68.66 in its account. Painter Declaration, ¶ 2, Exhibit GGG, p. 313. However, prior to the petition date, Defendant would deposit substantial amounts of money into Dimagic's account and use the account to pay for personal expenses. Painter Declaration, ¶ 2, Exhibit GGG, 280-325. Moreover, shortly after the petition date, Defendant deposited \$21,230.83 into Dimagic's account. *Id.*

In his schedule A/B, Defendant also scheduled \$700 in furniture. In his schedule C, Defendant claimed an exemption in the furniture for the full \$700. At his deposition, Defendant indicated that, after the petition date, Defendant gave his furniture to a man named Richard Lambert in order to satisfy a debt owed to Mr. Lambert. Painter Declaration, ¶ 2, Exhibit TT, 274-75. Defendant did not list Mr. Lambert as a creditor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**  
in his schedule E/F.

**Chapter 7**

In his schedule I, Defendant indicated that he is unemployed and listed "\$0.00" in monthly income. In his schedule J, Defendant listed a total of \$8,131 per month in expenses. In his SOFA, Defendant indicated that he earned a total of \$32,948 in 2015 and 2016, but a total of "\$0.00" in 2017 from January until the petition date. During his deposition, Defendant acknowledged that, in 2016, he earned approximately \$7,000 in France that he did not report in his SOFA. Painter Declaration, ¶ 2, Exhibit TT, 302:16-305:9. Defendant testified that he believed he did not have to report income earned overseas. *Id.* Defendant also testified that he was paid cash for work he did for the United Nations. Painter Declaration, ¶ 2, Exhibit TT, 424:24-429:5.

Nevertheless, Defendant's banking and other records indicated that, on January 5, 2015, Defendant received \$56,626.86 in royalties from the American Society of Composers, Authors, and Publishers ("ASCAP") into DMI's account. Painter Declaration, ¶¶ 14-15, Exhibit GGG, p.231, Exhibit HHH. In addition, Defendant's banking records reflect several deposits between 2015 and 2017. Painter Declaration, ¶ 14, Exhibits FFF, GGG.

In his SOFA, Defendant also indicated that, within two years before the petition date, Defendant had not given any gifts to third parties with a value of more than \$600. However, during his deposition, Defendant testified that he paid Ms. Rich's association fees and other expenses on the Mulholland Property "because she was going through a hardship." Painter Declaration, ¶ 2, Exhibit TT, 319:20-22. Defendant also testified that he gave a friend \$1,400 as a gift. Painter Declaration, ¶ 2, Exhibit TT, 351:20-352:14.

In his petition, Defendant indicated his address is 5737 Kanan Road, #117, Agoura Hills, California 91301. In his schedule A/B, Defendant indicated that he does not own any real property. Despite Ms. Rich being listed as the buyer on the escrow papers and Defendant's testimony that he was paying homeowners' association fees on behalf of Ms. Rich, Plaintiffs suggest that Defendant may have purchased the Mulholland Property for himself in the name of Ms. Rich and that Defendant is currently living at the Mulholland Property. Plaintiffs base this conclusion in part on the fact that Defendant paid many of the expenses related to the Mulholland Property, including association fees, utilities and taxes. Painter Declaration, ¶¶ 26-28, Exhibits

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

QQQ-SSS. On some of the checks used to make payments on the Mulholland Property, Defendant included memo lines indicating that the payments were made on behalf of himself. Painter Declaration, ¶ 26, Exhibit QQQ. In addition, a process server attempting to serve Ms. Rich found only Defendant at the Mulholland Property. Declaration of Luis Morato [doc. 46].

Moreover, in response to item 3 of the SOFA, Defendant indicated he had not lived with a spouse in a community property state within eight years of the petition date. Nevertheless, at his deposition, Defendant testified that he had obtained a divorce from Ms. Rich in 2012. Painter Declaration, ¶ 2, Exhibit TT, 293:14-18. During his deposition, Defendant also testified that he sold recording equipment on Craigslist for an aggregate price of between \$20,000 and \$22,000. SUF, ¶ 45; Painter Declaration, ¶ 2, Exhibit TT, 299:4-14. Defendant did not disclose these transfers. Defendant also testified that he kept gear in a storage unit until February or March 2017. Painter Declaration, ¶ 2, Exhibit TT, 305:15-307:9. Defendant did not list the storage unit in his SOFA. At his deposition, Defendant also testified that an individual named Mark Romans owed Defendant \$2,000 as of the petition date. Painter Declaration, ¶ 2, Exhibit TT, 325:21-326:3. Defendant did not include this debt in his schedules.

At his deposition, Defendant testified that Mr. Sterling received between \$500,000 and \$1 million of Plaintiffs' money. Painter Declaration, ¶ 2, Exhibit TT, 111:6-112:10. Defendant also testified that Mr. Sterling was the one who represented that artists such as Mick Jagger had agreed to perform. Painter Declaration, ¶ 2, Exhibit TT, 127:11-130:2. Despite this testimony, Defendant's bank records showed a total of \$55,000 paid to Mr. Sterling. Painter Declaration, ¶ 12, Exhibit DDD.

Defendant also testified that he never had any discussions with anyone with respect to securing performances from Justin Bieber, Diana Ross, Stevie Wonder, Christina Aguilera, Coldplay, Radiohead, Beyoncé, The Eagles or Don Felder. Painter Declaration, ¶ 2, Exhibit TT, 179:25-180:19. Defendant further testified that he was not aware of any artist accepting any deposit related to the Charity Concert. Painter Declaration, ¶ 2, Exhibit TT, 206:23-207:3. Finally, Defendant testified that he never had any discussions with attorneys related about the Charity Concert. Painter Declaration, ¶ 2, Exhibit TT, 91:11-16. Defendant testified that Mr. Sterling communicated with attorneys. *Id.*



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

On July 23, 2018, Plaintiffs filed a motion for summary judgment (the "MSJ") [doc. 40]. Through the MSJ, Plaintiffs request nondischargeability of the debt owed to them under 11 U.S.C. § 523(a)(2)(A), (a)(4) (on the bases of embezzlement and defalcation) and (a)(6). Plaintiffs also request denial of Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5). Plaintiffs also request prejudgment interest and punitive damages against Defendant. On July 31, 2018, Defendant filed a response to the MSJ (the "Response") [doc. 52]. In the Response, which is not supported by a declaration under penalty of perjury, Defendant asserts that he paid Mr. Sterling or AEI \$55,000 and that Mr. Sterling was the one who "stole" the funds from Plaintiffs. Defendant further states that Plaintiffs also hired other companies to prepare for the Charity Concert, and that the involvement of the other entities is the reason the Charity Concert never happened.

## **II. ANALYSIS**

### ***A. General Motion for Summary Judgment Standard***

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247-48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

*Id.* at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

***B. Burden of Proof***

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. § 523(a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

**C. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

**1. Defendant's Misrepresentations**

Here, Plaintiffs have proven by a preponderance of the evidence that Defendant made misrepresentations to Plaintiffs. Prior to the initial deposit of \$40,844, Defendant, through emails, informed Plaintiffs that he needed the funds to secure performances by several celebrity performers, including Mick Jagger, Bruno Mars and Justin Timberlake. Defendant represented to Plaintiffs that the parties were in danger of losing the artists and damaging their reputations if Plaintiffs did not immediately wire

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

the funds to Defendant. In addition, Defendant represented to Plaintiffs that he needed \$150,000 to secure performances by Mick Jagger and Earth, Wind & Fire. Once again, rather than use the funds to secure these performances, Defendant used the funds on personal expenditures. As to the \$750,000, Defendant again informed Plaintiffs that he needed the funds to secure performances from several well-known artists and threatened that several artists would withdraw if Plaintiffs did not pay. Again, Defendant used these funds to fund his lifestyle instead of secure performances by artists.

As to the \$53,300, Defendant initially represented that he needed the funds to pay for public relations and legal fees after the Charity Concert received unfavorable local press. Later, Defendant represented that he needed the funds to secure Mick Jagger and Earth, Wind & Fire. Defendant did not use the funds for either of these purposes; instead, Defendant used the money on personal expenses. As such, all of the above constitute misrepresentations, and Plaintiffs have met their burden of proving the first element of § 523(a)(2)(A).

**2. Knowledge of Falsity and Intent to Deceive**

A promise made without a present intent to perform satisfies § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989); *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). "In addition, where the promisor knew or should have known of his prospective inability to perform, the promise can be found to be fraudulent." *In re Tran*, 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003) (citing *Barrack*, 217 B.R. at 606). "[A] statement made with reckless indifference to the truth is sufficient to satisfy the requirement of a fraudulent representation by the plaintiff." *Id.* (citing *In re Anastas*, 94 F.3d 1280, 1286 (9th Cir. 1996); and *In re Ettell*, 188 F.3d 1141, 1145 n.4 (B.A.P. 9th Cir. 1999).

Because intent is difficult to prove through direct evidence, it "may be established by circumstantial evidence, or by inferences drawn from a course of conduct. Therefore, in determining whether the debtor had no intention to perform, a court may look to all the surrounding facts and circumstances." *In re Barrack*, 217 B.R. 598, 607 (B.A.P. 9th Cir. 1998); see also *In re Eashai*, 87 F.3d 1082, 1087 (9th Cir. 1996) ("[A] court may infer the existence of the debtor's intent... if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor."). "The scienter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

requirement for a fraudulent misrepresentation is established by showing either actual knowledge of the falsity of a statement, or reckless disregard for its truth." *In re Gertsch*, 237 B.R. 160, 167 (9th Cir. 1999) (internal quotation omitted).

Plaintiffs met their burden of proving that Defendant made the misrepresentations above with knowledge of the falsity of the statements and with an intent to deceive Plaintiffs. At the very least, Defendant acted with reckless indifference to the truth of his statements. There is substantial circumstantial evidence demonstrating that Defendant represented to Plaintiffs that he would secure several artists for the Charity Concert while knowing he would not use the funds for that purpose and intending to deceive Plaintiffs to fund Defendant's lifestyle.

First, as to the initial deposit of \$40,844, Defendant represented to Plaintiffs that he had received a "verbal yes" from both Mick Jagger and Earth, Wind & Fire to perform at the Charity Concert. In response to Defendant's representations that he had secured both artists, Plaintiffs wired two payments of \$9,960 to Defendant. Within a week of the first deposit and on the same day as the second deposit, Defendant withdrew the funds from DMI's account and began depositing the funds into his personal account for personal use. Defendant then began pressuring Plaintiffs to wire the rest of the \$40,844 to Defendant by informing them that failing to pay would be "extremely dangerous" and that their reputations would be damaged. Instead of using the funds to secure artists, Defendant again withdrew the funds or used DMI's or his personal debit cards to make personal purchases using the cards.

As to the \$150,000 deposit, Defendant sent Plaintiffs an Artist Acquisition Invoice promising to return the funds or apply the funds to a different artist if Mick Jagger or Earth, Wind & Fire did not perform. Immediately upon receiving the funds from Plaintiffs, Defendant transferred the \$150,000 into his personal account and, *on the very same day*, withdrew \$62,853.18 in cash. The next day, Defendant used \$13,136.23 to pay his personal credit card, and, within the next six days, Defendant withdrew another \$38,101.84. Defendant then used the remaining funds on personal expenses. Again, in light of the declarations filed by these artists' talent agents, Defendant never used the funds to secure Mick Jagger or Earth, Wind & Fire. Instead, Defendant rapidly depleted the funds by paying his personal expenses or converting the funds into cash.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Regarding the \$53,300, Defendant first informed Plaintiffs that he needed the funds to cover defamation and legal fees. Defendant represented in one of his emails that he was worried about defamation because some of the artists "have not legally been acquired... to perform." Botev Declaration, ¶ 14, Exhibit J, Panev Declaration, ¶ 2, Exhibit CC. After Plaintiffs emailed Defendant about the invoice, Defendant then changed his story and stated he needed the funds to secure Mick Jagger and Earth, Wind & Fire as performers. Defendant threatened to quit if Plaintiffs did not furnish the funds. Immediately after Plaintiffs wired the funds to Defendant, Defendant withdrew the funds and deposited the funds into his personal account. Defendant then withdrew the funds in cash and continued to spend the funds on himself.

To receive the final \$750,000 from Plaintiffs, Defendant again created a false sense of urgency. Defendant promised to secure several well-known artists, including Jennifer Lopez, Roger Waters and John Legend, but informed Plaintiffs that the deal would expire unless Plaintiffs wired \$750,000 by the next day. Defendant initially sent Plaintiffs an invoice by an entity called One Talent Agency. However, when Plaintiffs asked Defendant questions about One Talent Agency, such as the entity's registration number or account information, Defendant sent Plaintiffs an invoice from DMI instead.

To apply additional pressure on Plaintiffs, Defendant continued to represent to Plaintiffs that they would "lose every artist" if Plaintiffs did not wire the funds. Defendant also promised that, if an artist did not commit, Plaintiffs would receive a refund. After Plaintiffs insisted on certain changes to the agreement, Defendant forwarded to Plaintiffs an email purporting to be from a man named Neil Epstein, in which the author informed Plaintiffs that their requests were unusual and that the artists would "pass on this event" if they did not receive the money. After numerous emails from Defendant, in which Defendant repeatedly told Plaintiffs they were about to lose all of the artists, and after Defendant agreed to place the funds in an escrow account and refund the money if artists did not commit, Plaintiffs wired the \$750,000 to Defendant. At his deposition, Defendant testified that he never communicated with many of the artists named in Defendant's emails to Plaintiffs.

Despite Defendant's statements about the urgency of the deal, Defendant kept the \$750,000 in DMI's account for four days. On August 9, 2016, Defendant transferred the entire \$750,000 into his personal account. Throughout the month of August,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Defendant withdrew a total of \$305,790.19 in cash, used \$251,370 to purchase the Mulholland Property and depleted significant sums by spending thousands of dollars on expensive personal purchases, such as clothing, dining and electronics. Eventually, Defendant depleted all of Plaintiffs' funds by withdrawing the funds as cash or spending the funds on Defendant's lifestyle. To date, Defendant has not repaid Plaintiffs any of the funds.

Although Defendant's actions at the time he made the representations establish that Defendant knew the representations were false and that Defendant intended to deceive Plaintiffs, Defendant's subsequent actions also bolster the Court's finding that Defendant possessed fraudulent intent at the time he induced Plaintiffs to transfer the funds. For example, after Plaintiffs requested a refund, Defendant falsely informed Plaintiffs that Mr. Dachev had allowed Defendant to keep the funds for a concert in June 2017. Later, in state court, Defendant produced an email, purportedly from Mr. Dachev, stating that Defendant could keep the funds. Plaintiffs' expert in state court believed the email was a forgery.

Defendant also attempted to blame Mr. Sterling for taking Plaintiffs' funds. To support his argument, Plaintiff produced a check in the amount of \$600,000 allegedly issued to Mr. Sterling. However, Defendant's bank records demonstrated that the check was actually in the amount of \$10,000. In state court, Defendant also produced a bank statement reflecting a balance of \$715,662.41 in DMI's account as of July 14, 2016. The actual bank statement from that time period reflected a balance of \$662.41.

Moreover, Defendant repeatedly changed the artists he promised he would secure for the Charity Concert. Initially, Defendant promised Mick Jagger, Earth, Wind & Fire, Rod Stewart, "J. Depp," Slash, Bruno Mars and Justin Timberlake. Later, Defendant informed Plaintiffs he would be able to secure Jennifer Lopez, Robbie Williams, Roger Waters, Don Felder, Christina Aguilera and John Legend. Defendant also mentioned Blondie and the Beach Boys. Finally, after asking Plaintiffs to move the Charity Concert to December 2016, Defendant told Plaintiffs he had communicated with managers for Lenny Kravitz, Alicia Keys and Calvin Harris. Nevertheless, at his deposition, Defendant acknowledged that he had never communicated with any of these artists or their representatives and that, as far as he knew, none of the artists retained any deposits of funds. In light of the substantial circumstantial evidence above, the Court finds Defendant knew that his representations to Plaintiffs were false

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

and that Defendant intended to deceive Plaintiffs.

***3. Justifiable Reliance***

Plaintiffs also have met their burden of proving that Plaintiffs justifiably relied on Defendant's statements. Plaintiffs are based in Bulgaria and relied on Defendant's knowledge of the American music industry. Moreover, on several occasions, Defendant forwarded to Plaintiffs emails from purported third parties stressing that Plaintiffs' funds were necessary to proceed with securing performances for the Charity Concert. Defendant held himself out as someone with numerous and meaningful connections in the music industry. As a result, Plaintiffs' reliance was justifiable.

***4. Damages Proximately Caused by Reliance***

Plaintiffs also proved, by a preponderance of the evidence, that their damages (the extent of which is discussed below) were proximately caused by their reliance on Defendant's statements and conduct. Defendant's transferred funds and incurred costs in reliance on Defendant's assurance that he would secure performances for the Charity Concert. Defendant did not secure any such performances, and, as a result, Plaintiffs were injured in the amounts discussed below.

***D. 11 U.S.C. § 523(a)(4)***

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

***1. Embezzlement***

"Federal law and not state law controls the definition of embezzlement for purposes of section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1)



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

property rightfully in the possession of a nonowner, (2) the nonowner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). For purposes of embezzlement, a fiduciary relationship is not required. *Id.*, at 555. Here, Plaintiffs have met their burden of proving, by a preponderance of the evidence, that Defendant embezzled Plaintiffs' funds.

*a. Property Rightfully in Possession of Nonowner*

First, the funds were rightfully in the possession of Defendant, a nonowner of the funds. In *In re Wada*, 210 B.R. 572 (B.A.P. 9th Cir. 1997), the creditor hired the debtor, doing business as Uniglobe Carriage Travel, to arrange travel for the creditor. *Wada*, 210 B.R. at 574. To secure travel accommodations, the creditor advanced a total of \$119,400 to the debtor with the expectation that, if the creditor canceled travel plans, the creditor would receive a refund. *Id.* After the creditor canceled an upcoming trip, the debtor admitted she had kept part of the advanced funds for her personal use. *Id.*

Subsequently, the debtor filed a chapter 7 petition and the creditor moved for dischargeability of the debt owed to it under the embezzlement prong of 11 U.S.C. § 523(a)(4). *Id.*, at 575. In its analysis on appeal, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") found that the first element of embezzlement was present in *Wada*. *Id.*, at 576-77. Specifically, the BAP held that the debtor was a "nonowner" of the funds:

Here, it is undisputed that the funds transferred to the Debtor within her role as travel agent did not contain compensation for her services. The Debtor had no contractual right to any part of the funds. Her only role was to act as a conduit of the funds; to apply them exclusively for the arrangement of travel accommodations. Money received by travel agents to be paid to travel providers is not income.

...

[T]he fact the Debtor had lawful possession of the funds and wide discretion to dispose of the funds on behalf of the Appellant is insufficient to confer ownership of the funds to the Debtor. The funds given to the Debtor were not authorized to be used for anything other

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

than travel arrangements. The funds were not a gift, nor did they contain compensation for the Debtor's services. The Debtor took the funds and put them to a use not intended by the Appellant.

*Id.* (internal citation omitted).

As in *Wada*, Defendant was a "nonowner" of the funds. Defendant did not have a contractual right to the funds, and Plaintiffs did not furnish the funds to Defendant as compensation for his services. Instead, as established through the string of emails between the parties, Defendant's role was to "act as a conduit of the funds," as in *Wada*, by using the funds to secure performances for the Charity Concert or, in the case of the \$53,300 transferred to Defendant, to pay for public relations and legal costs associated with promotion of the Charity Concert. *Wada*, 210 B.R. at 576-77. Plaintiffs did not authorize Defendant's use of the funds for any other use. As such, upon the transfer of the funds to Defendant, Defendant was rightfully in possession of the funds but continued to be a "nonowner" acting as a conduit between Plaintiffs and third parties, such as artists, lawyers and publicists, who were intended to be the final recipients of the funds. Consequently, the first element of embezzlement is satisfied.

***b. Nonowner's Misappropriation of Property to Use Other Than That for Which it was Entrusted***

Plaintiffs also demonstrated that Defendant misappropriated the funds to a use other than that for which it was entrusted. Once again, the communications between the parties establish that Plaintiffs provided the funds to Defendant for two reasons: (A) as to the \$53,300, for Defendant to pay legal and public relations fees to address unfavorable local press about the Charity Concert; and (B) as to the rest of the funds, to secure artists to perform at the Charity Concert. Defendant's banking records establish that Defendant did not use the funds for either of these purposes. Instead, upon transfer of the funds from DMI's account to his personal account, Defendant either depleted the funds through multiple cash withdrawals or spent the funds on a variety of personal expenses.

Despite responding to the MSJ, Defendant has not proffered any evidence that he spent any of the \$53,300 on public relations or legal fees or that he spent any of the remaining funds on securing artists for the Charity Concert. In fact, the evidence

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

shows the opposite. After receiving the first infusion of funds from Plaintiffs, in the amount of \$40,844, Defendant immediately withdrew \$32,226.86. Defendant spent the portion he did not withdraw on purchases at gas stations, grocery stores, coffee shops, pet stores, restaurants and other retail establishments. As to the \$32,226.86, Defendant deposited part of these funds into his personal account, from which Defendant withdrew additional funds in cash and spent the remainder of the funds on personal expenses, including telephone payments and clothing.

Plaintiffs then provided Defendant approximately \$150,000 for the sole purpose of securing Mick Jagger and Earth, Wind & Fire. Agents for both artists provided testimony that neither Defendant nor Mr. Sterling ever negotiated for either artist's performance at the Charity Concert in Sofia, Bulgaria. Once again, upon receiving the funds from Plaintiffs, Defendant immediately withdrew \$155,600 from DMI's account and deposited the funds into his personal account. Defendant then made multiple cash withdrawals, paid off his personal credit card and spent the remaining funds on personal expenses.

As to the \$53,300 deposited by Plaintiffs, Defendant informed Plaintiffs he would use the funds for "legal defamation PR," "legal attorney fees" and "administrative services." Botev Declaration, ¶ 14, Exhibit J. Instead, Defendant moved the funds from DMI's account to his personal account and then, within two and a half weeks of receiving the \$53,300, withdrew a total of \$61,831.69 as cash. Defendant continued to use any remaining funds in his account on personal expenses.

The final \$750,000 Plaintiffs sent to Defendant was to be used to secure performances by multiple artists. However, Defendant acknowledged at this deposition that he never actually communicated to many of these named artists or their representatives. Defendant also immediately transferred the \$750,000 to his personal account and withdrew a total of \$305,790.19 in cash throughout the month of August 2016. From these funds, Defendant deposited \$150,000 into Dimagic's account, which he then used for personal expenses. Defendant also used \$251,370 of the \$750,000 to purchase the Mulholland Property allegedly for Ms. Rich. From August 2016 until October 2016, Defendant expended substantial sums on personal purchases, both lavish and ordinary. By September 2016, Defendant had closed out DMI's account with an \$87 balance. By June 2017, Defendant whittled down the funds in his personal account to \$147.16 and, as of the petition date, Defendant had used all but

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

\$68.66 from Dimagic's account.

The only argument offered by Defendant in response to misappropriation is that Defendant issued checks totaling \$55,000 to Mr. Sterling or AEI. However, to the extent the payments to Mr. Sterling or AEI were made using Plaintiffs' funds (it is unclear from which account Defendant issued the checks), Plaintiffs did not authorize any transfers to either Mr. Sterling or AEI. Moreover, there is no indication whatsoever that Defendant transferred the funds to Mr. Sterling or AEI for the purpose of securing performances for the Charity Concert or paying public relations or attorneys' fees in response to the press conference promoting the Charity Concert. Because Defendant *only* had authority to use the funds within the parameters drawn by Plaintiffs, and Plaintiffs never authorized a transfer of funds to Mr. Sterling or AEI, any transfer of Plaintiffs' funds to Mr. Sterling or AEI was a misappropriation of the funds. Further, Defendant's additional arguments that other companies were responsible for preparing for the Charity Concert is irrelevant to whether Defendant misappropriated the funds entrusted to him. In light of the above, the second element of embezzlement is also satisfied.

*c. Circumstances Indicating Fraud*

For the reasons stated above, Defendant acted with fraudulent intent. However, even if the Court found that Plaintiffs had not satisfied the elements of § 523(a)(2)(A), Plaintiffs have demonstrated that there were "circumstances indicating fraud" for purposes of embezzlement.

Courts within the Ninth Circuit appear to disagree on whether fraudulent intent is required as to this element and, if so, what kind of fraudulent intent satisfies this element. *See In re Wolf*, 577 B.R. 327, 344-45 (Bankr. C.D. Cal. 2017) ("[I]t appears to be unsettled whether fraudulent intent is required for this section. The Ninth Circuit has made 'no determination concerning whether federal law requires a finding of fraudulent intent for larceny....'" (quoting *In re Ormsby*, 591 F.3d 1199, 1205-06 (9th Cir. 2010)); *see also In re Leverton*, 2014 WL 3724162, at \*3 (Bankr. D. Ariz. Jul. 25, 2014) ("Courts in the Ninth Circuit disagree whether misrepresentation is required to establish 'circumstances indicating fraud' under § 523(a)(4).").

In a relatively recent unpublished decision, the BAP, relying on the Supreme Court of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

the United States' decision in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016), found that "circumstances indicating fraud" for purposes of embezzlement is "not synonymous" with an "intent to defraud" as required by § 523(a)(2)(A):

Debtor primarily asserts error because the state court did not make an explicit finding of fraud. We acknowledge this point but find it inapposite. The finding required for a determination of § 523(a)(4) embezzlement is that Debtor's actions indicated fraud. Such a determination is not synonymous with an intent to defraud as required under § 523(a)(2)(A). And even if it were, § 523(a)(2)(A) does not necessarily require a misrepresentation as Debtor argues. Recently in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016), the United States Supreme Court clarified that misrepresentation is not an element of actual fraud under § 523(a)(2)(A). That is, actual fraud may include a wider array of misconduct. The record here sufficiently establishes misconduct that falls within the broader definition of actual fraud and even more plainly meets the § 523(a)(4) requirement of indicia of fraud.

*In re Phillips*, 2016 WL 7383964, at \*5 (B.A.P. 9th Cir. Dec. 16, 2016).

Other courts appear to agree that, unlike § 523(a)(2)(A), the intent to defraud need not be present at the time of the misrepresentation or for the purpose of inducing the creditor to furnish funds. For instance, several courts have held that a debtor's subsequent concealment of misappropriated funds satisfies the "circumstances indicating fraud" element of embezzlement. *See In re Hatch*, 465 B.R. 479, 487 (Bankr. W.D. Mich. 2012) ("Because embezzlement, by definition, involves a situation in which the debtor initially has lawful possession of the property at issue, it is not necessary for a creditor to prove that a debtor's misrepresentations induced it to part with property. Rather, the creditor needs only to prove misappropriation and 'circumstances indicating fraud,' such as circumstances suggesting that the debtor intended to conceal the misappropriation.").

In *Wada*, the BAP noted that, after the debtor misappropriated the creditor's funds, the debtor "informed [the creditor] that she was unable to refund approximately

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

\$84,000.00 of the forwarded funds because she had incurred non-refundable deposits." *Wada*, 210 B.R. at 577. However, "when faced with discovery of the false statement, the Debtor admitted the deposits had never been made." *Id.* The BAP held that these facts were sufficient to qualify as "circumstances indicating fraud." *Id.*

In *Wolf*, the bankruptcy court held that the plaintiff had not proven its claim under § 523(a)(2)(A) because the representations at issue "were not shown to be false at the time they were made." *Wolf*, 577 B.R. at 343. However, the court found that the plaintiff had proven its claim of embezzlement and shown "circumstances indicating fraud" based on the following:

If intent is required, the evidence here easily supports Defendant's fraudulent intent. As detailed earlier, the Defendant admitted not paying for all of the diamonds he received and tried to blame others or valuation issues. The circumstances surrounding how Wolf managed the books and records of his business suggest that he did not want the business dealings to be easily traced. In particular, the regular destruction of the cash books and the inability to account for individual missing stones despite each stone being accompanied by a memo suggests a willful disregard for sound bookkeeping that could only inure to Defendant's benefit. Defendant's ever-changing narrative regarding the reasons for missing diamonds and his conduct in replacing the hard drive of a computer after learning that Paz was seeking access to the data it contained also show that he fraudulently and willfully took Plaintiff's diamonds for himself. The third element of embezzlement is satisfied.

*Id.*, at 345. As such, in *Wolf*, although the bankruptcy court did not find that the debtor fraudulently induced the creditor to give the debtor diamonds for purposes of § 523(a)(2)(A), the debtor's subsequent behavior after the debtor misappropriated the diamonds satisfied the "circumstances indicating fraud" element. *See also In re Kaplan*, 2016 WL 1321138, at \*13 (Bankr. C.D. Cal. Apr. 1, 2016) (relying on *Wada* and finding that the debtor's lies regarding what the debtor did with the creditor's funds satisfied the "circumstances indicating fraud" element of embezzlement).

Moreover, "courts have held that a debtor's intent to pay back the money she or he

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

does not own, does not negate the intent to defraud" for purposes of embezzlement. *In re Halsam*, 2016 WL 4441228, at \*3 (Bankr. D. Ariz. Aug. 22, 2016) (collecting cases); *see also In re Bevilacqua*, 53 B.R. 331, 334 (Bankr. S.D.N.Y. 1985) (holding that, although the debtor intended to use the funds only temporarily, the plaintiff was deprived of his property and demonstrated embezzlement for purposes of section 523(a)(4)); *and Matter of Shuler*, 21 B.R. 643, 644 (Bankr. D. Idaho 1982) ("The fact that the intent is to deprive the rightful owner of the funds only temporarily and not permanently ... does not eliminate the element of intent.").

Here, Plaintiffs also met their burden of proving that there existed circumstances indicating fraud surrounding Defendant's misappropriation of funds. First, like in cases above, Defendant actively concealed his misappropriation of funds. After Plaintiffs sued Defendant, Defendant claimed he had sent \$600,000 of Plaintiffs' funds to Mr. Sterling for use to secure artists and produced a receipt for a bank check dated July 14, 2016. However, after Plaintiffs subpoenaed Defendant's bank records, they discovered that the check was for a transfer of \$10,000, not \$600,000. Based on Defendant's banking records, Defendant has given Mr. Sterling and/or AEI a total of \$55,000. As noted above, Defendant continues to blame Mr. Sterling for the disappearance of Plaintiffs' funds.

In addition, Defendant produced a bank statement in state court showing that DMI had \$715,662.41 in its bank account as of July 14, 2016. Defendant's actual bank records reflected a balance of only \$662.41. Further, Plaintiffs' expert from state court believed that Defendant forged emails purporting to show that Mr. Dachev consented to Defendant keeping Plaintiffs' funds to secure performances for a June 2017 concert.

Moreover, Defendant repeatedly pressured Plaintiffs to send Defendant money by creating a false sense of urgency. Prior to many of the deposits from Plaintiffs, Defendant would name several well-known musical artists from whom Defendant had allegedly received verbal confirmations and concurrently state that the artists would be unavailable if Plaintiffs did not immediately provide the funds. For instance, prior to the initial transfer of \$40,844, Defendant forwarded an email allegedly written by a "J.F." informing Plaintiffs that he had "verbally confirmed" that "J. Depp, SIR Mick Jagger, Rod Stewart, Slash, Bruno Mars [and] Justin Timberlake" would be available but that, if Plaintiffs did not immediately transfer the requested money, "[a]ll this is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

for nothing." Botev Declaration, ¶ 11, Exhibit G. Defendant also told Plaintiffs that failing to provide the funds to Defendant would be "extremely dangerous" to their reputations. Botev Declaration, ¶ 9, Exhibit E. Despite Defendant's noted urgency, upon receiving the \$40,844, Defendant immediately withdrew the funds as cash or spent the funds on Defendant's own personal expenses.

Prior to receiving the \$750,000 deposit which Defendant represented he would use to secure performances from Jennifer Lopez, Robbie Williams, Don Felder, Roger Waters and Pink!, Defendant sent Plaintiffs a Deal Offer Form set to expire one day later. Panev Declaration, ¶ 5, Exhibit FF. Once again, through several emails to Plaintiffs, Defendant repeatedly threatened that all the artists would withdraw if Plaintiffs did not immediately wire the \$750,000 requested by Defendant. Instead of using the \$750,000 to secure artists, Defendant either withdrew the funds as cash or spent the funds on his own expenses. Evidently, there was no actual emergency need for funds for the purpose of securing artists.

Aside from Defendant's emails regarding the urgent need for funds, Defendant also resisted providing information about One Talent Agency to Plaintiffs after Defendant sent Plaintiffs a Deal Offer Form using One Talent Agency's letterhead. Plaintiffs requested information about One Talent Agency's registration number, address, representatives, bank accounts and contacts. Instead of providing this information to Plaintiffs, Defendant informed Plaintiffs that, if Plaintiffs paid One Talent Agency directly, they would incur significant taxes. Defendant then sent Plaintiffs a different agreement using DMI's letterhead and instructed Plaintiffs to wire the \$750,000 into DMI's account. When Plaintiffs asked Defendant to place the funds in an escrow account they could monitor, Defendant stalled, continued to pressure Plaintiffs under the threat of losing artists and, despite reassuring Plaintiffs that he would create an escrow account, never did. Instead, Defendant withdrew all of the funds as cash or spent the funds on his own personal expenses.

Moreover, although Defendant initially represented to Plaintiffs that he needed \$53,300 to cover public relations costs and legal fees, Defendant later told Mr. Panev that he could not secure performances from Mick Jagger or Earth, Wind & Fire without the transfer of \$53,300. When Mr. Panev informed Defendant that Plaintiffs had already paid approximately \$150,000 to secure these performances, Defendant threatened to resign.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Eventually, Defendant emailed Plaintiffs informing them that "an entire group of managers" wanted to postpone the Charity Concert to December 1, 2016. Panev Declaration, ¶ 15, Exhibit PP. When Plaintiffs asked Defendant to return their funds, Defendant emailed Plaintiffs blaming Plaintiffs for the delay. Panev Declaration, ¶ 16, Exhibit QQ. In that email, Defendant told Plaintiffs that managers representing Lenny Kravitz, Alicia Keys and Calvin Harris were concerned about the Charity Concert, despite the fact that Defendant had never previously represented that he was attempting to secure any of these acts for the Charity Concert.

Initially, Defendant told Plaintiffs he would wire back the funds once artists returned deposits to Defendant. After additional requests from Plaintiffs, Defendant informed Mr. Panev that he had received confirmation from Mr. Dachev that Defendant could keep the funds to secure performances for the Charity Concert, which Defendant now represented would take place in June 2017. During all of the above communications with Plaintiffs, Defendant was converting Plaintiffs' funds into cash or spending Plaintiffs' funds on personal expenses. To date, Defendant has never returned any of the funds to Plaintiffs.

Finally, Defendant's spending dramatically increased after June 2016, when Plaintiffs made the initial deposit into DMI's account, and Defendant began spending large sums on personal goods and services. Defendant's banking records demonstrate that Defendant lived large on the misappropriated funds; Defendant spent significant sums on fine dining, expensive clothing, travel, at psychic stores and on several other personal goods and services. In light of these facts, there are several circumstances indicating fraud, and Plaintiffs have met their burden of demonstrating that Defendant embezzled funds within the meaning of § 523(a)(4).

## ***2. Defalcation***

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); see also *In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796. Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at n.7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

Plaintiffs have not met their burden of demonstrating that an express, technical or statutory trust existed prior to the misappropriation of funds. Plaintiffs argue that Defendant's promise to create an escrow account was sufficient to create an express trust despite the fact that Defendant never created an escrow account or placed the \$750,000 therein. Plaintiffs rely on *In re Nassbridges*, 434 B.R. 573 (Bankr. C.D. Cal. 2010). In *Nassbridges*, the bankruptcy court found that the debtor, an investment broker, owed a fiduciary duty to the plaintiffs because of the "great repose of confidence between a client and a more sophisticated investment broker, and there was a trust *res*." *Nassbridges*, 343 B.R. at 587-88. After an appeal of the bankruptcy court's decision in *Nassbridges*, the BAP found that "a technical trust relationship, at minimum, existed between [the debtor] and [the plaintiffs]...." *In re Nassbridges*, 2011 WL 3244396, at \*14 (B.A.P. 9th Cir. Jul. 15, 2011).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

Chapter 7

Here, Plaintiffs have neither shown that Defendant held a "more sophisticated" position, such as that of an investment broker, or that an express, statutory or technical trust existed between the parties prior to Defendant's embezzlement of the funds. As a result, Plaintiff has not met its burden of demonstrating defalcation for purposes of § 523(a)(4).

**E. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in *Jercich*).

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Plaintiffs offer only the following analysis with respect to § 523(a)(6)—

Here, the record is clear that DiMaggio acted willfully and maliciously. As shown at length, DiMaggio repeatedly lied about why he needed Plaintiffs' money, what he was going to do with it and what he actually did with it, all in an effort to extract more money from the Foundation.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

MSJ, p. 29. To the extent this language implies that Plaintiffs are relying on Defendant's embezzlement as the "wrongful act" under § 523(a)(6), the Court notes that courts have found that embezzlement may serve as the "wrongful act" for § 523(a)(6). *See Wolf*, 577 B.R. at 346 (collecting cases and finding that the debtor's embezzlement may serve as the tort basis for the plaintiff's claim under § 523(a)(6)). As such, the Court will find that Defendant committed a "wrongful act."

However, Plaintiffs not having offered any analysis regarding whether the wrongful act was "done intentionally," "necessarily causes injury," or was committed "without just cause or excuse," the Court will not find that Defendant acted maliciously at this time. In addition, Plaintiffs have not offered any analysis or evidence that Defendant acted with an intent to injure Plaintiffs, as opposed to with an intent to commit the act in question. Thus, at this time, the Court also will not find that Defendant acted willfully.

**F. 11 U.S.C. § 727(a)(2)**

Section 727(a)(2)(A)-(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor...." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986) (quoting *Devers*, 759 F.2d at 753-54).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *see also In re Zhang*, 463 B.R. 66, 78 (Bankr. S.D. Ohio 2012).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Plaintiffs assert that the Court should deny Defendant's discharge because Defendant allegedly concealed: (A) \$1.5 million "in income," (B) his interest in Dimagic; (C) the sale of recording equipment and payments to storage units; and (D) some kind of interest or arrangement with respect to the Mulholland Property and Defendant's payments and gifts to his ex-wife. Plaintiffs also contend that Defendant transferred his furniture postpetition.

As to Defendant's "1.5 million in income," Plaintiffs have not separated the amounts Defendant embezzled from any income actually earned by Defendant. As explained above, embezzled money does not qualify as earned income. *Wada*, 210 B.R. at 576-77. For purposes of § 727(a)(2), the limited window is either one year prior to the petition date or postpetition. During the entirety of that time, Defendant was depositing embezzled funds into his accounts. As such, Plaintiffs have not demonstrated that, within the time frame set forth by § 727(a)(2), Defendant concealed actual "income."

With respect to Defendant's interest in Dimagic, it appears Dimagic was active both pre- and postpetition. However, Plaintiffs have not demonstrated that Defendant failed to schedule Dimagic with intent to hinder, delay or defraud creditors of the estate. The same is true for the sale of the recording equipment and the payments for storage. Plaintiffs did not demonstrate that Defendant failed to schedule these transfers with intent to hinder, delay or defraud creditors of the estate.

As to the transfer of furniture, Defendant claimed the furniture as exempt and no party in interest timely objected to Defendant's claim of exemption in the furniture. As such, Plaintiffs did not demonstrate that Defendant transferred the furniture with intent to hinder, delay or defraud creditors of the estate.

Finally, as concerns the Mulholland Property, the purchase of the Mulholland Property was prior to one year preceding the petition date. As for the payments Defendant made on the Mulholland Property, such as taxes and utilities, Plaintiffs did not meet their burden of proving that Defendant failed to schedule these transfers with intent to hinder, delay or defraud. Consequently, Plaintiffs have not met their burden of proof under § 727(a)(2).

**G. 11 U.S.C. § 727(a)(3)**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

Section 727(a)(3) places an affirmative duty on the debtor to keep and preserve records accurately documenting his or her business and personal affairs. *See In re Caneva*, 550 F.3d 755, 762 (9th Cir. 2008). Requiring accurate documentation "removes the risk to creditors of 'the withholding or concealment of assets by the bankrupt under cover of a chaotic or incomplete set of books or records.'" *Id.* (quoting *Burchett v. Myers*, 202 F.2d 920, 926 (9th Cir. 1953)). We strictly construe this exception to discharge in favor of the debtor's fresh start. *Id.*

To succeed on its objection to discharge under § 727(a)(3), Plaintiffs must show "(1) that [Defendant] failed to maintain and preserve adequate records, and (2) that such failure rendered it impossible to ascertain [Defendant's] financial condition and material business transactions." *In re Cox*, 41 F.3d 1294, 1296 (9th Cir. 1994) (quoting *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir. 1992)). Generally, records are sufficient if they allow the court and creditors to trace the debtor's financial dealings. *In re Ridley*, 115 B.R. 731, 733 (Bankr. D. Mass. 1990).

As to their claim under § 727(a)(3), Plaintiffs assert that Defendant did not keep records of his income, such as ASCAP royalties, earnings from France, payments made towards the Mulholland House or records regarding DMI or Dimagic. However, Plaintiffs have not shown that they attempted to obtain such records from Defendant, or that the failure of Defendant to maintain such records has made it impossible for Plaintiffs to ascertain Defendant's financial condition. In light of the extensive banking and corporate records provided to the Court, Plaintiffs were able to subpoena Defendant's pertinent financial records from third parties.

Plaintiffs also assert that Defendant did not document certain transactions, such as the money owed to Defendant by Mr. Romans or income Defendant may have received from the United Nations. However, once again, Plaintiffs did not demonstrate that they attempted to obtain such records from Defendant or that Defendant had any such records. At his deposition, Defendant testified that he was paid cash for the work he did for the United Nations. There is no evidence that Defendant kept records of money owed to him by Mr. Romans.

Finally, Plaintiffs mention Defendant's attempts in state court to alter his financial records and present a false financial picture. However, Defendant did not alter his records in connection with his bankruptcy case, and Plaintiffs were able to obtain a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

comprehensive picture of Defendant's finances by issuing subpoenas to third parties. The Court will not enter summary judgment as to Plaintiffs' claim under § 727(a)(3).

**H. 11 U.S.C. § 727(a)(4)**

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. To bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010) (quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show 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 creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*Roberts*, 331 B.R. at 884. Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when taken together, evidence a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011).

As to § 727(a)(4), Plaintiffs assert that Defendant omitted or made a false oath about: (A) his earnings and income; (B) his ownership of Dimagic; (C) money owed to Defendant by Mr. Romans; (D) property kept in storage; and (E) certain transfers to third parties. Plaintiffs also assert that Defendant falsely testified at his deposition that he paid Mr. Sterling \$500,000 to \$1 million and that Dimagic was a new entity.

Regarding Defendant's earnings and income, the Court finds that Defendant made a false oath as to Defendant's earnings in 2015. The record demonstrates that Defendant received \$56,626.86 from ASCAP in 2015. Nevertheless, in his SOFA, Defendant stated that he earned a combined total of \$32,948 in 2015 and 2016. As such, Defendant made a false oath about his earnings in his SOFA. In addition, the false oath was material because the information has bearing on the size of Defendant's estate. As to the other deposits in account, the deposits either originated from embezzled funds or Plaintiffs have not demonstrated the origin of the funds. Thus, at this time, the Court does not find that Defendant falsely stated that he did not "earn" the rest of the deposits.

The Court also finds that Defendant omitted his ownership interest in Dimagic. Defendant should have listed Dimagic in his schedule A/B and his SOFA. The omission of Dimagic also was material because, as evidenced by Dimagic's corporate account records, Dimagic held significant funds before and after the petition date. However, the Court does not find that Defendant made a false oath as his testimony that Dimagic was a new entity. Given that Defendant formed Dimagic in 2016, Defendant's statement that Dimagic was a new entity is vague and not necessarily false.

Defendant also should have scheduled the money owed to Defendant by Mr. Romans and listed the \$1,400 gift to his friend. These omissions were material because the information could have led to the discovery of assets and a recovery of the funds into the estate. Moreover, Defendant should have included in his schedules and statements information about the payments Defendant made to Ms. Rich and/or on the Mulholland Property. These omissions also were material as the information could have led to the discovery of assets or the recovery of the Mulholland Property, or of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

payments made on behalf of Ms. Rich, into the estate.

Further, Defendant's testimony that he paid Mr. Sterling or AEI between \$500,000 and \$1 million was a false oath. The record demonstrates that Defendant paid Mr. Sterling and/or AEI a total of \$55,000. Defendant has not otherwise demonstrated that he actually paid Mr. Sterling or AEI more than the \$55,000 reflected in the checks to Mr. Sterling and/or AEI. In addition, this false oath was material because it pertains to Defendant's total liability to Plaintiffs and, as a result, may have an impact on the size of Defendant's estate.

Finally, Defendant omitted information about Defendant's storage unit. However, Plaintiffs have not shown that these omissions were material. There is no indication that inclusion of the information could have led to the discovery of additional assets.

As to all of the above, Plaintiffs have not provided any analysis regarding whether the false oaths or omissions were made "knowingly" and "fraudulently." As a result, the Court will reserve the issue of intent for trial.

**I. 11 U.S.C. § 727(a)(5)**

Pursuant to 11 U.S.C. § 727(a)(5), a debtor's discharge will be denied if "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." Under § 727(a)(5), the objecting party must demonstrate that:

- (1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

*In re Retz*, 606 F.3d 1189, 1205 (9th Cir. 2010).

Plaintiffs assert that Defendant's discharge should be denied because Defendant has not satisfactorily explained the disappearance of assets Defendant bought prior to the petition date, such as electronics, recording equipment, etc. However, Plaintiffs have

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

not specified which assets Defendant possessed prior to the petition date. Instead, Plaintiffs vaguely refer to "electronics, furniture, and recording equipment." MSJ, p. 35. As such, the Court also will not enter judgment on Plaintiffs' claim under § 727(a)(5).

**J. Damages**

In light of the fact that the Court will enter judgment in favor of Plaintiffs on Plaintiffs' claim of fraud under 11 U.S.C. § 523(a)(2)(A), the Court will award Plaintiffs their actual and consequential damages. *See Cohen v. de la Cruz*, 523 U.S. 213, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998). The record demonstrates that Plaintiffs suffered actual damages, by transferring funds to Defendant, in the amount of \$994,144. Plaintiffs also suffered consequential damages by incurring costs in reliance on Defendant in the amount of \$160,303.08. The Court will not award Plaintiffs their requested consequential damages arising from payments made to Ms. Saint Clair to secure additional artists, as these payments do not appear to have arisen from Defendant's conduct, or for payments made to Mr. Kourtev, because Plaintiffs do not specify why they paid Mr. Kourtev \$25,000.

The Court also will award Plaintiffs prejudgment interest at the federal interest rate. "An award of prejudgment interest in a § 523 proceeding in which the creditor prevails ensures the creditor is made whole and has a full recovery." *In re Del Valle*, 577 B.R. 789, 810 (Bankr C.D. Cal. 2017) (citing *Cohen*, 523 U.S. at 222–23). "Such an award lies within the sound discretion of the bankruptcy court." *Id.* "Awards of prejudgment interest are governed by considerations of fairness and are awarded when it is necessary to make the wronged party whole." *Purcell v. United States*, 1 F.3d 932, 942-43 (9th Cir. 1993). "The federal prejudgment interest rate applies to actions brought under federal statute, such as bankruptcy proceedings, unless the equities of the case require a different rate." *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 871 (9th Cir. 2001). "Under federal law the rate of prejudgment interest is the Treasury Bill rate as defined in 28 U.S.C. § 1961 unless the district court finds on substantial evidence that a different prejudgment interest rate is appropriate." *United States v. Gordon*, 393 F.3d 1044, 1063 n.12 (9th Cir. 2004).

The Court, in its discretion, declines to apply a rate other than the federal interest rate. Pursuant to 28 U.S.C. § 1941, as of August 26, 2016, the week preceding the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

September 2, 2016 date of demand, the federal rate was 0.62%. Applying the 0.62% federal interest rate on the allowed principal of \$1,154,447.08 yields \$7,157.57. The Court will award Plaintiffs \$7,157.57 in prejudgment interest.

The Court will not award punitive damages at this time. Pursuant to Cal. Civ. Code § 3294(a), punitive damages may be allowed "[i]n an action for the breach of an obligation not arising from contract, where it is proven *by clear and convincing evidence* that the defendant has been guilty of oppression, fraud, or malice...." (emphasis added). Here, although the Court found that Plaintiffs' claim of fraud is supported by a preponderance of the evidence, the Court has not found clear and convincing evidence of fraud. At this time, without having held trial, the Court will not award punitive damages under the clear and convincing standard required by Cal. Civ. Code § 3294(a).

### **III. CONCLUSION**

The Court will enter a judgment in favor of Plaintiffs on Plaintiffs' claim under 11 U.S.C. § 523(a)(2)(A) and Plaintiffs' claim of embezzlement under 11 U.S.C. § 523(a)(4). The Court also will award Plaintiffs \$994,144 in actual damages, \$160,303.08 in consequential damages and \$7,157.57 in prejudgment interest, for a total award of \$1,161,604.65.

The Court also finds that Plaintiffs have met their burden of proving that Defendants made the following false oaths, and that the false oaths were material, in accordance with 11 U.S.C. § 727(a)(4): (A) Defendant made a false oath about his earnings from 2015; (B) Defendant omitted his interest in Dimagic; (C) Defendant omitted a claim against Mr. Romans; (D) Defendant omitted a gift of \$1,400 to a friend; (E) Defendant omitted payments made to Ms. Rich and/or on the Mulholland Property; and (F) Defendant made a false oath regarding the amount of money transferred to Mr. Sterling and/or AEI. The Court further finds that Defendant omitted information about a storage unit he used in 2017, but that the omission was not material. The Court otherwise denies the MSJ as to Plaintiffs' claim under § 727(a)(4).

The Court denies the MSJ as to Plaintiffs' claims under 11 U.S.C. §§ 523(a)(6) and 727(a)(2), (a)(3) and (a)(5). The Court also denies the MSJ as to Plaintiffs' claim of defalcation under 11 U.S.C. § 523(a)(4). Finally, the Court denies Plaintiffs' request

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**      **Robin DiMaggio**  
for an award of punitive damages.

**Chapter 7**

Plaintiffs must submit a proposed judgment within seven (7) days.

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01081      Albini et al v. Zuckerman

**#25.00** Defendant's motion to dismiss complaint to determine dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)

Docket      4

**Tentative Ruling:**

For the reasons discussed below, the Court will grant the motion with leave to amend.

**I. BACKGROUND**

On May 4, 2018, Robert Edward Zuckerman ("Defendant") filed a voluntary chapter 11 petition. On July 20, 2018, Edward P. Albini, et al. ("Plaintiffs") filed a complaint against Defendant (the "Complaint"), seeking nondischargeability of the debt owed to them pursuant to 11 U.S.C. § 523(a)(2)(A).

On October 5, 2016, the Sonoma County Superior Court tried an action by Plaintiffs against Defendant for intentional misrepresentation, concealment (fraud), promises without intent to perform, conspiracy to defraud and elder abuse (the "State Court Action"). On October 6, 2016, the state court entered a total judgment against Defendant in the amount of \$14,545,001.00, "taking into account special damages, prejudgment interest, allowable elder abuse damages for the designated elders and punitive damages." (the "Judgment") [doc. 1, Exh. 1].

The state court found that Defendant "fraudulently obtained \$6,435,000.00 in loans from plaintiffs...with no intent whatsoever to use the money in the Malibu land development project as [Defendant] represented in writing." Judgment, p. 7. Moreover, "no part of plaintiffs' collective \$6,435,000.00 loan was ever used in any manner for this Malibu land development project." *Id.* The state court took judicial notice of "the numerous discovery motions by plaintiffs against [Defendant], who repeatedly engaged in discovery abuse and steadfastly refused to provide plaintiffs with documentation regarding where their \$6,435,000.00 loan went." Judgment, p. 11.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

The state court further found that Defendant "was the central figure in charge of this fraudulent land development scheme...that severely damaged the plaintiffs herein." Judgment, p. 7-8. Finally, the state court found that Defendant "never had an intention to repay plaintiffs any part of their \$6,435,000.00 collective loan." Judgment, p. 11.

On March 3, 2017, the state court entered an amended judgment against Defendant (the "Amended Judgment") [doc. 1, Exh. 3]. The state court did not alter any of its relevant findings in the Amended Judgment, but added to the total \$14,545,001.01 judgment "\$565,375.00 in allowable attorney's fees... and \$24,719.95 in allowable costs for a total of \$15,135.096.00 nunc pro tunc as of October 5, 2016." *Id.* In the Amended Judgment, the state court noted, in relevant part:

On October 5, 2016, at 8:30 a.m., in Department 18 of the Sonoma County Superior Court before the Honorable Rene Chouteau, plaintiffs herein appeared for trial against the remaining defendant Robert E. Zuckerman.

Appearing at this trial was Edward McCutchan of Sunderland | McCutchan, LLP, attorney for the remaining plaintiffs in this action. *Appearing for defendant, Robert Zuckerman, was Raul Garcia of Garcia & Reed, LLP.*

Defendant, Robert Zuckerman's motion in limine number 1 to dismiss this action under CCP sections 583.310 and 538.360(a) was first heard and denied. ...

After the court rendered its decision denying Robert Zuckerman's motion in limine number 1 to dismiss this action, his attorney Raul Garcia stated on the record that he was withdrawing as Robert Zuckerman's attorney of record in this action and left the courtroom never to return. Defendant, Robert E. Zuckerman did not appear for trial despite plaintiffs' filed notices to appear in lieu of subpoena (initial and amended) dated September 21, 2016 where Robert Zuckerman's financial records as to net worth were requested.

Amended Judgment, pp. 4-5 (emphasis added).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 11

On August 22, 2018, Defendant filed the Motion [doc. 4]. On September 28, 2018, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 11]. On October 10, 2018, Defendant filed a reply to the Opposition [doc. 15].

## II. DISCUSSION

### A. *General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard*

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

CONT...

**Robert Edward Zuckerman**

**Chapter 11**

*Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Further, a court may consider 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 copy attached to the [Rule] 12(b)(6) motion." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotation marks omitted). "The court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged...." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

**B. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, Plaintiffs must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robert Edward Zuckerman**

**Chapter 11**

- conduct;
- (3) an intent to deceive;
  - (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
  - (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000); see also *In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991) (citing *In re Houtman*, 568 F.2d 651, 655 (9th Cir. 1978)).

**1. Misrepresentations with Knowledge of Falsity and Intent to Deceive**

Representations made without an intent to perform satisfy the first three requirements of § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise can also be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have an intent to perform at the time he made the representation. *Matter of Bercier*, 934 F.2d 689, 691-92 (5th Cir. 1991) ("A mere promise to be executed in the future is not sufficient to make a debt nondischargeable, even though there is no excuse for the subsequent breach.") (citations omitted).

**2. Justifiable Reliance**

To satisfy the reliance requirement of § 523(a)(2)(A), a plaintiff must show "justifiable" reliance, not "reasonable reliance." *Field v. Mans*, 516 U.S. 59, 74-75 (1995). Justifiable reliance takes into account the "qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases." *Id.* at 71. Thus, a plaintiff does not have a duty to investigate, and because fraudulent misrepresentation is an intentional tort, a plaintiff's contributory negligence does not bar recovery. *Id.* at 70, 75-77; see also *Eashai*, at 1090 ("[N]egligence in failing to discover an intentional misrepresentation" does not defeat justifiable reliance.) However, "justifiable reliance does not exist where a creditor ignores red flags" that show up before extending

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

---

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 11

credit. *In re Miller*, 310 B.R. 185,198-99 (Bankr. C.D. Cal. 2004) (citing *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996)); *see also In re Apte*, 180 B.R. 223, 229 (B.A.P. 9th Cir. 1995) ("In sum, although a person ordinarily has no duty to investigate the truth of a representation, 'a person cannot purport to rely on preposterous representations or close his eyes 'to avoid discovery of the truth.'"") (citations omitted).

**3. Proximate Causation/Damages**

Section 523(a)(2)(A) requires that the damage to the creditor be proximately caused by the debtor's fraud. *In re Sabban*, 600 F.3d 1219, 1223 (9th Cir. 2010) (explaining that the debtor will not receive a discharge of debts "resulting from" or "traceable" to fraud). Consequently, the debtor may be liable for a loss to the creditor resulting from the fraud, even if it exceeds the value obtained by the debtor. *See, e.g., Cohen v. De La Cruz*, 523 U.S. 213, 218, 124 (1998) (for example, damages may include punitive damages and attorney's fees and costs).

**4. Discussion**

Plaintiffs attached the Amended Judgment as an exhibit to the Complaint. As such, for purposes of a Rule 12(b)(6) motion, the Court may consider the Complaint and Amended Judgment in determining whether dismissal is proper.

Plaintiffs allege that Defendant committed fraud and rely on the Amended Judgment to satisfy the elements of 11 U.S.C. § 523(a)(2)(A). Because Plaintiffs are alleging fraud, the Complaint must also meet the heightened pleading standard in Rule 9(b).

Regarding the first element of 11 U.S.C. § 523(a)(2)(A), the state court found that Defendant made the following false misrepresentations: (1) Defendant purposefully overvalued the security for Plaintiffs' initial loans; and (2) the Malibu property could not be developed as represented by Defendant. Amended Judgment, p. 11. As such, Plaintiffs have alleged sufficient facts to satisfy the first element.

Regarding the third element of 11 U.S.C. § 523(a)(2)(A), the state court found that Defendant "never had an intention to repay plaintiffs any part of their \$6,435,000.00 collective loan." Judgment, p. 11. Pursuant to Rule 9(b), intent may be alleged

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

generally. As such, Plaintiffs have alleged sufficient facts to satisfy the third element.

Regarding the fifth element of 11 U.S.C. § 523(a)(2)(A), the state court found that Defendant "was the central figure in charge of this fraudulent land development scheme...that severely damaged the plaintiffs herein." Amended Judgment, p. 8. As such, Plaintiffs have alleged sufficient facts to satisfy the fifth element.

However, regarding the second and fourth elements, the Amended Judgment states a broad legal conclusion that Defendant "wrongfully engaged in fraudulent conduct including elder abuse." Amended Judgment, p. 11. In determining a Rule 12(b)(6) motion, the Court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Thus, the conclusory allegations of law in the Amended Judgment are insufficient to defeat the Motion. Plaintiffs need to allege sufficient factual allegations to meet the elements of 11 U.S.C. § 523(a)(2)(A) and the requirements of Rule 9(b).

The Amended Judgment is vague on factual allegations relating to: (1) the circumstances constituting fraud; and (2) whether each and all Plaintiffs justifiably relied on Defendant's statements or conduct. *See* Rule 9(b). The factual allegations in the Complaint also are insufficient to meet these elements. Thus, in the Complaint and the attachments thereto, Plaintiffs have not alleged enough facts to state a claim to relief that is plausible on its face under 11 U.S.C. § 523(a)(2)(A) and satisfies Rule 9(b).

***C. Collateral Estoppel***

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment .... In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 2015 WL 2124780, at \*3 (B.A.P. 9th Cir. May 5, 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

"The party asserting preclusion bears the burden of establishing the threshold requirements." *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, at \*3 (quoting *In re Kelly*, 182 B.R. 255,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

258 (B.A.P. 9th Cir. 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996)). "Any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the [issue preclusive] effect." *Kelly*, at 258.

The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

*In re Harmon*, 250 F.3d at 1245 (citing to *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)).

"California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Plyam*, at \*3 (quoting *Harmon*, at 1245). "Many jurisdictions require, as a threshold requirement to the application of collateral estoppel, a showing that a party against whom collateral estoppel is being asserted had a full and fair opportunity to litigate the issue. Under California law, the presence or absence of a full and fair opportunity to litigate usually is relevant not to the threshold inquiry, but rather to the public policy inquiry." *Id.*

In the Opposition, Plaintiffs argue that the doctrine of collateral estoppel bars all defenses of Defendant to the Complaint. At this stage, the Court need not determine whether collateral estoppel applies. On a Rule 12(b)(6) motion, the Court assesses the sufficiency of the allegations in the complaint to state a claim to relief that is plausible on its face. The Court's review is limited to the contents of the complaint and the attached exhibits. As discussed above, the Complaint and the attachments thereto do not contain sufficient allegations in regards to the circumstances constituting fraud and Plaintiffs' justifiable reliance.

In the Motion, Defendant argues that it would be inequitable and highly prejudicial to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

---

2:30 PM

CONT... **Robert Edward Zuckerman**

**Chapter 11**

apply the doctrine of collateral estoppel under the specific facts of the case. Defendant asserts two reasons for this argument: (1) the Amended Judgment is allegedly void on its face because he did not have proper notice of the trial; and (2) he was allegedly abandoned by his attorney at the outset of trial.

Regarding Defendant's first argument, for purposes of this Motion, the Court need not determine whether the Amended Judgment is void on its face for lack of proper notice. In determining the Motion, the Court must accept factual allegations in the Complaint and the attachments thereto as true and construe the pleadings in the light most favorable to Plaintiffs. As such, the Court must accept the factual allegations in the Amended Judgment as true. Thus, the Court need not reach a determination on whether the Amended Judgment is void, for purposes of this Motion.

Regarding Defendant's second argument, because the trial proceeded with neither Defendant nor his attorney present, it may be that Defendant did not have a full and fair opportunity to litigate the fraud issue. The Motion alleges that Defendant was "abandoned" by his attorney at the outset of trial "with no notice to [Defendant] of what was happening, and no opportunity for [Defendant] to request a continuance or attempt to obtain new counsel." Motion, p. 10. Defendant did not provide the Court with a declaration attesting to this allegation.

***D. Dismissed Plaintiffs***

Defendant argues that the Court should dismiss the Complaint with prejudice as to twenty of the forty-five Plaintiffs. Defendant asserts that twenty Plaintiffs were either previously dismissed from the State Court Action or have assigned their state law fraud claims against Defendant, and therefore, lack standing to pursue nondischargeability of the claim in this Court. However, even if Plaintiffs were dismissed from the State Court Action, that does not necessarily prohibit them from asserting a claim in this case. As such, at this time, the Court will not dismiss the Complaint with prejudice as to any Plaintiffs.

***E. Leave to Amend***

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson*,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

353 F.3d at 758; *Lopez*, 203 F.3d at 1127. It appears that the deficiencies in the Complaint can be cured by amendment. As such, the Court will grant the Motion with leave to amend.

**III. CONCLUSION**

The Court will grant the Motion with leave to amend.

Plaintiffs must submit the order within seven (7) days.

**Plaintiffs' Evidentiary Objections [doc. 12]**

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Sandford L. Frey set forth below:

paras. 3:11-13, 4, 5, 6 and 7: sustained

exhibits A and B: sustained

exhibit C: sustained, although the Court will take judicial notice of the claims register and the related proofs of claims, filed with this Court.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Sandford L. Frey

**Plaintiff(s):**

Ronald Lapham

Represented By  
Edward McCutchan

Vito Lovero

Represented By  
Edward McCutchan

Frederick Mann

Represented By  
Edward McCutchan

Katherine Mann

Represented By  
Edward McCutchan

Jim Nord (Mein Trust)

Represented By  
Edward McCutchan

Evelina Dale Peritore

Represented By  
Edward McCutchan

Charlotte Pitois

Represented By  
Edward McCutchan

Justin Poeng

Represented By  
Edward McCutchan

Gary Ricioli

Represented By  
Edward McCutchan

Leon Sanders

Represented By  
Edward McCutchan

Mary Lou Schmidt

Represented By  
Edward McCutchan

Mark Schulte

Represented By  
Edward McCutchan

Charles Sebranek

Represented By  
Edward McCutchan

Richard Seversen

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
We Care Animal Rescue	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan
Vern Fung	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel	Represented By Edward McCutchan
Carl (Eugene) Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Dale Barnes	Represented By Edward McCutchan
Ken Bowerman	Represented By Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Eileen Boyle	Represented By Edward McCutchan
Henry P Crigler	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Henry Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Erhard York Trustee	Represented By Edward McCutchan
Louise Escher York	Represented By Edward McCutchan
Graham Gettamy	Represented By Edward McCutchan
Robert P Gilman	Represented By Edward McCutchan
John Hightower	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Edward McCutchan

Bill Hing

Represented By  
Edward McCutchan

K Owyong Crigler

Represented By  
Edward McCutchan

Jim Nord (Patrick Family Trust)

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01081 Albin et al v. Zuckerman

**#25.10** Status conference re complaint to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18

Docket 1

**Tentative Ruling:**

The parties should be prepared to discuss their availability for a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Liebling et al v. Goodrich et al* [1:18-ap-01087-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK].

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Pro Se

**Plaintiff(s):**

Ronald Lapham

Represented By  
Edward McCutchan

Vito Lovero

Represented By  
Edward McCutchan

Frederick Mann

Represented By  
Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Katherine Mann	Represented By Edward McCutchan
Jim Nord (Mein Trust)	Represented By Edward McCutchan
Evelina Dale Peritore	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Gary Ricioli	Represented By Edward McCutchan
Leon Sanders	Represented By Edward McCutchan
Mary Lou Schmidt	Represented By Edward McCutchan
Mark Schulte	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Richard Seversen	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Walter Spirindonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
We Care Animal Rescue	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan
Vern Fung	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel	Represented By Edward McCutchan
Carl (Eugene) Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Dale Barnes	Represented By Edward McCutchan
Ken Bowerman	Represented By Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Eileen Boyle	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Henry P Crigler	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Henry Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Erhard York Trustee	Represented By Edward McCutchan
Louise Escher York	Represented By Edward McCutchan
Graham Gettemy	Represented By Edward McCutchan
Robert P Gilman	Represented By Edward McCutchan
John Hightower	Represented By Edward McCutchan
Bill Hing	Represented By Edward McCutchan
K Owyong Crigler	Represented By Edward McCutchan
Jim Nord (Patrick Family Trust)	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 17, 2018

Hearing Room 301

2:30 PM

**1:18-11150 Robert Edward Zuckerman**  
Adv#: 1:18-01086 Abel v. Zuckerman et al

**Chapter 11**

**#26.00** Defendant's motion to dismiss complaint

Docket 7

**\*\*\* VACATED \*\*\* REASON: Order denying motion to dismiss as moot  
entered 10/02/2018.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
-------------------------	---

**Defendant(s):**

Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Zuckerman Building Company, a	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
San Jacinto Z, LLC, a California	Pro Se
Rezinate San Jacinto, LLC, a	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
Nickki B Allen, an individual	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 17, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

DOES 1-20

Pro Se

**Plaintiff(s):**

Richard Abel

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:11-11379 David J Behrend**

**Chapter 7**

**#1.00** Trustee's Final Report and Applications for Compensation

Peter J. Mastan, Chapter 7 Trustee

Danning, Gill, Diamond & Kollitz, LLP, Attorneys for Trustee

CliftonLarsonAllen, LLP, Accountants and Forensic Professionals for Trustee

Docket 1265

**Tentative Ruling:**

Peter J. Mastan, chapter 7 trustee – approve fees of \$74,900.86 and reimbursement of expenses of \$3,465.83, pursuant to 11 U.S.C. § 330, on a final basis. The chapter 7 trustee is authorized to receive pro rata reduced amounts of \$53,525.17 in fees and \$3,465.83 in expenses.

Danning Gill Diamond & Kollitz LLP ("Danning Gill"), counsel to chapter 7 trustee – approve fees of \$169,079.50 and reimbursement of expenses of \$7,334.13, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis, including the approved fees and expenses awarded in the interim fee application for services rendered as general counsel for the chapter 11 trustee. Danning Gill is authorized to receive pro rata reduced amounts of \$173,057.84 in fees and \$7,334.13 in expenses.

CliftonLarsonAllen LLP ("CLA"), accountant to chapter 7 trustee – approve fees of \$8,487.50 and reimbursement of expenses of \$370.00, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis. CLA is authorized to receive reduced pro rata amounts of \$17,139.58 in fees and \$370.00 in expenses.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**CONT... David J Behrend**

**Chapter 7**

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

David J Behrend

Represented By  
Summer Saad  
Howard Rosoff  
David G Symons

**Trustee(s):**

Peter J Mastan (TR)

Represented By  
Kathy Bazoian Phelps  
Aaron E de Leest  
Peter J Mastan  
Douglas Duane Kappler  
Timothy D McGonigle  
Peter J Mastan (TR)  
John N Tedford

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#2.00** Chapter 7 Trustee's second interim application for compensation and reimbursement of expenses

Docket 158

**Tentative Ruling:**

The Court will continue this hearing to October 25, 2018 at 10:30 a.m.

Appearances on October 18, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#3.00** Final application for approval of compensation and expense reimbursement of Baker & Hostetler LLP, for the period of November 26, 2016 through and including May 2, 2018

Docket 159

**Tentative Ruling:**

The Court will continue this hearing to October 25, 2018 at 10:30 a.m.

Appearances on October 18, 2018 are excused.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#4.00** Application for payment of interim fees and/or expenses (11 U.S.C. § 331)  
of Foley & Lardner LLP, attorneys for Trustee's  
Period: 5/2/2018 to 8/31/2018

Docket 161

**Tentative Ruling:**

The Court will continue this hearing to October 25, 2018 at 10:30 a.m.

Appearances on October 18, 2018 are excused.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#5.00** Application for payment of interim fees and expenses  
of Berkeley Research Group, LLC Accountant  
period: 11/1/2016 to 8/15/2018

Docket 151

**Tentative Ruling:**

The Court will continue this hearing to October 25, 2018 at 10:30 a.m.

Appearances on October 18, 2018 are excused.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12189 BOON RHEE**

**Chapter 7**

**#6.00** Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorney for Trustee

Docket 43

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee – approve fees of \$2,250.00 and reimbursement of expenses of \$69.76, pursuant to 11 U.S.C. § 330, on a final basis.

Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois"), counsel to chapter 7 trustee – approve fees of \$6,075.00, pursuant to 11 U.S.C. § 330, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or Lewis Brisbois is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

BOON RHEE

Represented By  
Charles M Green

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Lovee D Sarenas  
Lewis Brisbois Bisgaard & Smith LLP

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#7.00** Status conference re chapter 11 case

fr. 5/25/17; 9/7/17; 10/19/17; 12/21/17; 2/8/18; 3/29/18; 6/7/18

Docket 1

**Tentative Ruling:**

Contrary to the entered *Order Confirming Liquidating Plan of ColorFX, Inc. Presented by The Official Committee of Unsecured Creditors* [doc. 199], the Post-Confirmation Committee did not timely file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization, and the belatedly filed *Post Confirmation Status Conference Report* (the "Post-Confirmation Status Report") [doc. 223] is not supported by evidence.

Local Bankruptcy Rule ("LBR") 3020-1(b) provides that a postconfirmation status report must include:

- (1) A schedule listing for each debt and each class of claims: the total amount required to be paid under the plan; the amount required to be paid as of the date of the report; the amount actually paid as of the date of the report; and the deficiency, if any, in required payments;
- (2) A schedule of any and all postconfirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon;
- (3) Projections as to the reorganized debtor's, postconfirmation trustee's, or other responsible party's continuing ability to comply with the terms of the plan;
- (4) An estimate of the date for plan consummation and application for final decree; and
- (5) Any other pertinent information needed to explain the progress toward completion of the confirmed plan.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**CONT... ColorFX, Inc.**

**Chapter 11**

In the Post-Confirmation Status Report, the Post-Confirmation Committee did not include a schedule of plan payments pursuant to LBR 3020-1(b)(1), projections as to the continuing ability to comply with terms of the plan pursuant to LBR 3020-1(b)(3) and estimated dates for plan consummation and application for final decree pursuant to LBR 3020-1(b)(4).

<b>Party Information</b>
--------------------------

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#8.00** Second amended disclosure statement hearing in support of second amended plan of reorganization

fr. 6/14/18; 9/13/18

Docket 95

**Tentative Ruling:**

On September 13, 2018, JPMorgan Chase Bank, N.A. ("Chase") filed a stipulation between Chase and the debtors regarding treatment of Chase's claim under the debtors' proposed chapter 11 plan (the "Stipulation") [doc. 87]. On September 17, 2018, the Court entered an order approving the Stipulation [doc. 90]. On October 11, 2018, the debtors filed a second amended chapter 11 plan [doc. 96] and related disclosure statement [doc. 95] and incorporated the terms of the Stipulation.

Having reviewed the Stipulation, the second amended chapter 11 plan and the second amended disclosure statement, it appears that the debtors' liquidation analysis is accurate, and the Court will approve the debtors' disclosure statement as containing adequate information.

Proposed dates and deadlines regarding "Individual Debtors' Second Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Individual Debtors' Second Amended Disclosure Statement in Support of Original Plan of Reorganization:"

Hearing on confirmation of the Plan: **December 13, 2018 at 1:00 p.m.**

Deadline for the debtors to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtors: **October 26, 2018.**

The debtors must serve the notice and the other materials (with the exception of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Yegiya Kutyan and Haykush Helen Kutyan Chapter 11**

ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtors: **November 23, 2018.**

Deadline for the debtors to file and serve the debtors' brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **December 3, 2018.** Among other things, the debtors' brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#9.00** Status conference re: chapter 11 case

fr. 10/19/17; 3/15/18; 6/14/18; 9/13/18

Docket 1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#10.00** Status conference re: chapter 11 case

fr. 6/21/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's *Order Setting (1) Deadlines Concerning Chapter 11 Plan and Disclosure Statement and (2) Continued Status Conference* (the "Order") [doc. 36], the debtor did not timely file a proposed chapter 11 plan and related disclosure statement by October 1, 2018. In addition, the debtor did not timely move for an extension of the deadline by which the debtor must file a proposed chapter 11 plan and related disclosure statement. Moreover, contrary to the Order, the debtor did not timely file a status report. What is the status of the debtor's efforts to file a chapter 11 plan and related disclosure statement?

**Party Information**

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11801 Rudex Broadcasting Limited Corp.**

**Chapter 11**

**#11.00** Status conference re chapter 11 case

fr. 9/20/18

Docket 1

**Tentative Ruling:**

Prior to the initial status conference, held on September 20, 2018, the Court issued a tentative ruling to dismiss this case based on, among other things, the debtor's history of filings and dismissals and the debtor's failure to file a status report. The debtor's principal appeared at the initial status conference and requested a continuance. At that time, the Court instructed the debtor to file an application for an order approving employment of counsel, a disclosure of compensation of the debtor's attorney and a status report no later than **October 9, 2018**.

The debtor has not timely filed any of these documents. In light of the debtor's continued failure to comply with the Court's requirements, the Court will adopt its prior tentative ruling, below, and dismiss the debtor's case with a 180-day bar.

**9/20/2018 Tentative:**

On January 22, 2014, Rudex Broadcasting Limited Corp. ("Debtor") filed a voluntary chapter 11 petition (the "First Case") [1:14-bk-10311-VK]. Debtor was represented by Michael D. Kwasigroch. On February 21, 2014, the Court entered an order dismissing the First Case for failure to file schedules and statements timely [1:14-bk-10311-VK, doc. 11].

On May 7, 2015, Debtor filed another voluntary chapter 11 petition (the "Second Case") [1:15-bk-11603-MT]. Debtor was again represented by Mr. Kwasigroch. On July 23, 2015, the Court entered an order dismissing the Second Case for Debtor's failure to provide required information to the U.S. Trustee [1:15-bk-11603-MT, doc. 16].

On July 18, 2018, Debtor filed a third voluntary chapter 11 petition, initiating Debtor's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Rudex Broadcasting Limited Corp. Chapter 11**

current bankruptcy case (the "Third Case"). Debtor once again is represented by Mr. Kwasigroch. On August 16, 2018, the Court entered an order [doc. 27] setting an initial status conference and requiring Debtor to file a status report, supported by evidence, no later than September 6, 2018. Contrary to the Court's order, Debtor has not filed a status report.

In addition, on August 21, 2018, creditor Luis Crescitelli filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 33]. Through the RFS Motion, Mr. Crescitelli sought to pursue his nonbankruptcy rights to obtain possession of property which Debtor leased pursuant to a month-to-month tenancy. Debtor did not oppose the RFS Motion. On September 12, 2018, the Court held a hearing on the RFS Motion. Debtor did not appear. On September 13, 2018, the Court entered an order granting the RFS Motion [doc. 39].

In light of Debtor's repetitive chapter 11 filings, and its repetitive failure to comply with its obligations as a debtor and debtor in possession, the Court will dismiss this case with a 180-day bar pursuant to 11 U.S.C. §§ 105(a) and 349(a). The Court will retain jurisdiction regarding matters arising under 11 U.S.C. §§ 110, 329 or 362 and to award any appropriate judgment in favor of the United States Trustee.

The Court will prepare the order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rudex Broadcasting Limited Corp.

Represented By  
Michael D Kwasigroch

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#12.00** Status conference re: chapter 11 case

fr. 10/11/18

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **January 14, 2019.**

Deadline to mail notice of Bar Date: **October 31, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **January 31, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 21, 2019.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 18, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#12.10** Status conference re chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18

Docket 1

**Tentative Ruling:**

Extended deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **January 31, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 21, 2019.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. ***The status report must be supported by evidence in the form of declarations and supporting documents.***

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Thursday, October 18, 2018

Hearing Room 301

2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 11

#13.00 Motion to require Schuller & Schuller to pay attorneys fees and costs

**Stip to cont hrg fld 10/1/18**

Docket 160

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
10/1/18. Hearing continued to 11/1/18 at 2:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**1:11-18591 NOOR NORRIS**

**Chapter 7**

Adv#: 1:17-01033 Zamora, Chapter 7 Trustee v. NORRIS et al

**#1.00** Trial re: complaint to revoke discharges of debtors  
Noor Norris and Hely Norris

[For Ruling]

fr. 6/7/17; 11/15/17; 1/24/18; 6/26/18; 9/27/18

Docket 1

**Judge:**

For the reasons discussed below, the Court will enter judgment against Noor Norris and in favor of Hely Norris. Appearances on October 24, 2018 are excused.

**I. BACKGROUND**

On July 18, 2011, Noor Norris ("Noor") and Hely Norris ("Hely" and together with Noor, "Defendants") filed a voluntary chapter 7 petition. [FN1]. Nancy J. Zamora was appointed chapter 7 trustee ("Plaintiff"). On December 9, 2011, the Court converted Defendants' case to one under chapter 11 [1:11-bk-18591-VK ("Bankruptcy Case"), doc. 32].

On November 19, 2014, the Court converted Defendants' case back to a chapter 7 case because Defendants' disclosure statement did not have adequate information as required to solicit acceptances or rejections of Defendants' fourth amended chapter 11 plan, and Defendants failed to confirm a chapter 11 plan by the deadline previously set by the Court [Bankruptcy Case, doc. 291]. On November 20, 2014, Plaintiff was re-appointed chapter 7 trustee [Bankruptcy Case, doc. 293]. The deadline by which to file an objection to Defendants' discharge was February 6, 2015. [FN2].

The section 341(a) meeting of creditors was initially held on August 22, 2011 (the "August 2011 Meeting") [Joint Pretrial Stipulation ("JPS"), doc. 27, 3:11]. The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

meeting of creditors was continued several times. Defendants appeared and testified at the meeting of creditors on August 22, 2011, September 30, 2011 (the "September 2011 Meeting"), January 12, 2015 (the "January 2015 Meeting"), June 5, 2015 (Hely only) and July 24, 2015 (Noor only) (collectively, the "Meetings of Creditors"). *Id.* On April 30, 2016, Plaintiff concluded the Meetings of Creditors. *Id.*

***A. Defendants' Disclosures in 2011***

***1. Defendants' Initial Schedules***

On July 29, 2011, Defendants filed their original schedules and statement of financial affairs ("Initial Schedules" or "Initial SOFA") [Bankruptcy Case, doc. 14]. In their Initial Schedule A, Defendants claimed they owned the following real properties: (1) a residence located at 20359 Via Sansovino, with a fair market value of \$9,000,000.00 (the "Via Sansovino Property"); (2) a rental property located at 19812 Ahwanee Lane, with a fair market value of \$520,000.00 (the "Ahwanee Lane Property"); (3) a second rental property located at 1546 E. Kettering, with a fair market value of \$120,000.00 (the "Kettering Property"); and (4) a commercial property located at 2101 W. Avenue J, with a fair market value of \$640,000.00 (the "Avenue J Property"). Doc. 14, p. 12. Defendants did not list an interest in any other real property. *Id.*

In their Initial Schedule B, Defendants claimed they owned "stocks" valued at \$2,500.00. *Id.* at 14. Defendants did not list an interest in any incorporated or unincorporated businesses, partnerships or joint ventures. *Id.* Defendants also did not list an interest in any equipment or inventory. *Id.* at 15.

In their Initial Schedule I, Defendants stated that Noor was self-employed for ten years as a "Property Manager," and Hely was self-employed for ten years as an "Independent Contractor." *Id.* at 26. Defendants indicated that their combined average monthly income was \$1,287.50 from the "operation of business or profession or farm." *Id.* Defendants did not list any income from real properties. *Id.*

In their Initial SOFA, Defendants claimed that the only business in which they held an interest during the six years immediately preceding the petition was Dubai Auto Sales

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

("Dubai Auto") from 2001 to 2010. *Id.* at 33. Further, Defendants stated that, as of the petition date, their income from the operation of a business for 2011 was \$7,785.00. *Id.* at 29. Defendants listed their income from the operation of a business for 2010 as \$33,000.00 and for 2009 as \$11,592.00. *Id.*

**2. The August 2011 Meeting**

At the August 2011 Meeting, Noor testified that Dubai Auto was his dealership, which closed on January 25, 2011. *JPS*, 5:22. When questioned whether Dubai Auto still retained ownership of any vehicles, Noor responded in the negative. *Id.* at 5:23. Noor further testified there was \$2,000.00-\$3,000.00 in receivables due and owing to Dubai Auto. *Id.* at 5:22.

Noor also testified that he currently worked for and had worked for American Eagle Oil Company ("American Eagle Oil"), a corporation, as a supervisor, for fourteen to fifteen years. *Id.* at 6:28. He testified that he received a commission of \$4,000.00 to \$6,000.00 a month from American Eagle Oil. *Id.*

Although the timing is unclear, Plaintiff testified she later discovered that Noor founded "American Eagle Oil, which he launched in the United Arab Emirates in 1999 and expanded across the Middle East." [Trial Declaration of Nancy Zamora ("Zamora Decl."), doc. 31, ¶ 42]. After investigation, Plaintiff learned "that American Eagle Oil is an ongoing brand used by [Defendants'] other entity Afghan American, LLC" ("Afghan American"), which continues to distribute and market oil in the Middle East. *Id.* at ¶ 44.

**3. Defendants' First Amended Schedules and SOFA**

On September 28, 2011, Defendants filed their first set of amended schedules and amended statement of financial affairs ("First Amended Schedules" or "First Amended SOFA") [Bankruptcy Case, doc. 21]. Contrary to their Initial Schedule A, in their First Amended Schedule A, Defendants stated that the only real property in which they held an interest was the residence located at 20359 Via Sansovino, with a fair market value of \$900,000.00. Doc. 21, p. 4. Defendants did not list an interest in

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT... NOOR NORRIS

Chapter 7

any other real property. *Id.*

In their First Amended Schedule B, Defendants stated that they owned a community interest in Dubai Auto, with a fair market value of \$2,300.00. *Id.* at 7. Defendants did not list an interest in any other incorporated or unincorporated businesses, partnerships or joint ventures. *Id.* Consistent with their representations in their Initial SOFA, in their First Amended SOFA, Defendants represented that the only business in which they held an interest during the six years immediately preceding the petition was Dubai Auto. *Id.* at 16.

Despite Noor's conflicting testimony at the August 2011 Meeting, Defendants still represented on their First Amended Schedule I that Noor was self-employed for ten years as a "Property Manager," and Hely was self-employed for ten years as an "Independent Contractor for Econo Lube." *Id.* at 11. Defendants continued to represent that their combined average monthly income was \$1,287.50. *Id.* In their First Amended SOFA, Defendants drastically increased their income from the operation of a business for 2011 from \$7,785.00 in their Initial SOFA to \$91,500.00. *Id.* at 12.

#### **4. The September 2011 Meeting**

At the September 2011 Meeting, Noor testified that he was a shareholder in Norris Group, AFG ("Norris Group"). JPS, 6:31. Plaintiff asked if Defendants had listed their interest in Norris Group on their Schedule B. *Id.* Noor responded, "I really don't know." *Id.* Noor stated, "I'm a shareholder...To me there is nothing to do with the corporations because it's a personal bankruptcy." *Id.*

Counsel for creditor Sima Shidfar also asked Noor, "What is West East Coast Trading, LLC?" *Id.* at 6:32; Zamora Decl, ¶ 36. Noor testified that West East Coast Trading, LLC ("WECT – California") was the dba for the Norris Group. JPS, 6:32. Defendants never amended their schedules to include the Norris Group dba WECT – California. *Id.*

#### **B. Defendants' Disclosures in 2012**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

On January 14, 2012, Defendants further amended their schedules and statement of financial affairs ("Second Amended Schedules" or "Second Amended SOFA") [Bankruptcy Case, docs. 46 and 47]. In their Second Amended Schedule A, Defendants claimed they owned the following real properties: (1) the Via Sansovino Property, with a fair market value of \$995,000.00; (2) the Ahwanee Lane Property, with a fair market value of \$520,000.00; (3) the Kettering Property, with a fair market value of \$100,000.00; (4) the Avenue J Property, with a fair market value of \$640,000.00; and (5) vacant land located in Lancaster, California, with a fair market value of \$10,000.00. Doc. 47, p. 2. Defendants did not list an interest in any other real property. *Id.*

In their Second Amended Schedule B, in response to item 2 (checking, savings or other financial accounts), Defendants disclosed for the first time ownership in an "E-Trade, Brokerage Account" and an account with "MFGlobal Finance," with an aggregate value of \$4,700.00. *Id.* at 3. In their Second Amended Schedule C, they claimed exemptions for the entire aggregate value. *Id.* at 6. Defendants also increased the fair market value of their ownership interest in Dubai Auto, from \$2,300.00 to \$60,000.00. *Id.* at 3. As the basis for this increase in value and in contrast to the Noor's testimony at the August 2011 Meeting, Defendants stated that Dubai Auto had "inventory in Dubai" that "diminished in value with the economy." *Id.*

Also in their Second Amended Schedule B, Defendants disclosed for the first time a 49% ownership interest in West & East Coast Trading, Inc. ("WECT"), with a value of \$0.00. *Id.* Defendants stated that WECT owned 75% of a hotel building in Dubai, United Arab Emirates, which was "underwater based on liens." *Id.* at p. 3-4. Defendants represented that WECT had "been losing money or breaking even since inception in 2004." *Id.* [FN3].

In their Second Amended Schedule B, Defendants also first disclosed a 50% ownership interest in West & East Coast Trading, LLC – Afghanistan Branch ("WECT – Afghanistan") and a 49% ownership interest in West & East Coast Trading, LLC – Dubai, United Arab Emirates ("WECT – Dubai"). Doc. 47, p. 4.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

Defendants indicated that the current value of their ownership interest in WECT – Afghanistan was \$0.00 and in WECT – Dubai was \$1,000.00. *Id.*

In their Second Amended Schedule I, contrary to their previous representations, Defendants disclosed that, as of the petition date, Noor was self-employed for twenty-five years in "oil and fuel services" and Hely was employed for seventeen years an "Office Clerk-Ind. Contractor" at Econo-Lube & Tune. *Id.* at 8. Defendants further stated that their combined average monthly income was \$24,468.61 (much higher than the \$1,287.50 monthly income disclosed in their Initial and First Amended Schedule I), including \$14,050.00 in income from the following real properties: (1) the Ahwanee Lane Property; (2) the Kettering Property; and (3) the Avenue J Property. *Id.*

In their Second Amended SOFA, Defendants disclosed for the first time that the businesses in which they held an interest during the six years immediately preceding the petition date were not only Dubai Auto, but also WECT from 1999 to present, WECT – Dubai from 2000 to present and WECT – Afghanistan from July 11, 2010 to present. *Id.* at 14-15.

Unlike their Initial SOFA and First Amended SOFA, Defendants stated that in 2011 their income from the operation of a business was \$40,000.00 (an increase from their Initial SOFA and a decrease from their First Amended SOFA). *Id.* at 11. Defendants listed their income in 2010 from the operation of a business as \$48,000.00 and for 2009 as \$22,540.00. *Id.* Defendants also disclosed for the first time that their income from gross rents was \$64,589.00 in 2011, \$118,428.00 in 2010 and \$191,568.00 in 2009. *Id.*

***C. Sale of Estate Assets in 2013***

On March 16, 2012, PREF WB Acquisitions, LLC ("PREF") filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* with respect to the Avenue J Property (the "RFS Motion") [Bankruptcy Case, doc. 73]. On April 26, 2012, the Court entered an order granting the RFS Motion and terminating the automatic stay with regard to the Avenue J Property [Bankruptcy Case, doc. 89].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

On November 19, 2012, Defendants filed a *Motion to Dismiss Case; or in the Alternative, to Approve the Sale of Equipment, Lease of Property and Authority to Refinance Property* (the "Sale Motion") [Bankruptcy Case, doc. 130]. In the Sale Motion, Defendants stated that the Avenue J Property was an automotive repair facility (Econo Lube & Tune) currently owned by them. *Id.* at p. 3. Hely's brother was allegedly operating the business and fell behind on his rent payments to Defendants. *Id.* at 4.

PREF scheduled a foreclosure sale of the Avenue J Property for November 21, 2012. *Id.* In order to avoid the foreclosure sale, Defendants found a buyer to purchase the garage equipment in the Avenue J Property for \$120,000.00 and to lease the property for \$5,500.00 per month. *Id.* Defendants also entered into a refinance agreement with PREF. *Id.* at 5.

As part of the refinance agreement, Defendants were to make a \$420,000.00 mortgage payment immediately upon approval of the Sale Motion. *Id.* In the Sale Motion, Defendants stated that the \$120,000.00 proceeds from the sale of the garage equipment would be used to partially fund the \$420,000.00 mortgage payment. *Id.* at 6. On January 3, 2013, the Court entered an order granting the Sale Motion in part [Bankruptcy Case, doc. 142].

***D. Defendants' Disclosures in 2015***

***1. Defendants' Third Amended Schedules***

On January 10, 2015, following the reconversion of the bankruptcy case to chapter 7, Defendants filed a further amended Schedule B and further amended Schedule C ("Third Amended Schedules") [Bankruptcy Case, doc. 306]. In their Third Amended Schedule B, Defendants stated that their ownership interest in Dubai Auto had a fair market value of \$0.00, rather than the \$60,000.00 previously represented. Doc. 306, p. 2. Defendants noted that Dubai Auto had "inventory in Dubai that has diminished in value with the economy." *Id.* Defendants stated that storage fees had not been paid since 2012 and that there was likely no equity after the storage fees. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT...

NOOR NORRIS

Chapter 7

***2. The January 2015 Meeting***

At the January 2015 Meeting, Noor testified that all Defendants' assets were listed in the Schedules, as amended. JPS, 9:50. He also testified that WECT (first disclosed in Defendants' Second Amended Schedule B) owned a hotel building and that he owned a 50% interest in two units in a high-rise condominium project (the "Two Condo Units"), which were separate from that hotel building. *Id.* Noor testified that there was a "little bit" of debt against the Two Condo Units. *Id.*

Noor further testified that he was currently employed by WECT – Afghanistan in connection with oil and gas contracts with the United States Army. *Id.* at 9:51a. When asked for a copy of the contract with the United States Army, Noor testified that there was no contract for 2015 and the last valid contract expired on July 1, 2013. *Id.* at 9:51b. He testified that the agreement with the United States government gave WECT – Afghanistan the right to bid for the work along with multiple other contractors. *Id.*

At the January 2015 Meeting, Plaintiff made a request for Defendants to produce documents and information regarding: (1) the value of WECT's hotel building and any debt against it; (2) tax returns for WECT, WECT – Afghanistan and WECT – Dubai; (3) the vehicles owned by Dubai Auto; and (4) an inventory and valuation of Defendants' jewelry. *Id.* at 10:54. From March 2015 through July 2015, Plaintiff sent numerous emails to Defendants' counsel reiterating her request for the documents, as well as requesting additional documentation. *Id.* at 10-12. For the most part, Plaintiff's requests for documents were ignored. Zamora Decl., ¶¶ 58-76. On July 20, 2015, Defendants sent Plaintiff some of the documents requested; some of the documents, including those related to the hotel building, were written in Arabic. JPS, 12:72.

***E. Defendants' Disclosures After the Deadline to File an Objection to Defendants' Discharge***

On August 22, 2016, Plaintiff filed a motion seeking Court approval to examine both

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

Defendants pursuant to Federal Rule of Bankruptcy Procedure 2004 (the "Rule 2004 Motion") [Bankruptcy Case, doc. 456]. On September 6, 2016, the Court entered an order granting the Rule 2004 Motion [Bankruptcy Case, doc. 462]. On September 20, 2016, the Trustee examined both Debtors separately (the "Rule 2004 Exams"). JPS, 3:11.

In response to documents requested by the Rule 2004 Motion, Defendants provided, among other things, a copy of an investment contract related to the Two Condo Units (the "Condo Contract"), which Noor had first disclosed during the January 2015 Meeting. JPS, 13:75; Trial Exhs. 42 and 43.

During Noor's Rule 2004 Exam, he testified that, before August 2011, Defendants had invested \$1,098,903.94 in six condominium units prior to construction (the "Six Condo Units"), rather than only the Two Condo Units he disclosed in January 2015. *Id.* at 13:76. He further testified that the Condo Contract entitled him to a return of 80% of his investment, because the Six Condo Units were not completed by the end of December 2009 (the "Contract Right"). *Id.*; Trial Exh. 42. Defendants did not disclose the Contract Right on their schedules, any amendments thereto or during the Meetings of Creditors. JPS, 13:77.

Noor also testified that he demanded the return of his money under the Contract Right as recently as January 2014. *Id.* at 13:78. The bankruptcy estate would have been entitled to the return of approximately \$880,000.00. *Id.*

***F. Plaintiff's Discovery of an Undisclosed Estate Asset***

On September 5, 2017, Plaintiff discovered that Noor holds an approximately 33% ownership interest in real property located at 19823 Mariposa Pines Way, Northridge, California 91326 (the "Mariposa Pines Property"). Zamora Decl., ¶ 89; Trial Exh. 23. Plaintiff further discovered that Noor held this interest as of the petition date. *Id.*

A grant deed dated August 3, 2007, recorded in the Los Angeles County Recorder's Office, reflects title to the Mariposa Pines Property as follows: Rahim M. Safdari, a married man as his sole and separate property, Fatima Giti Safdari, a married woman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

as her sole and separate property and Noor Norris, a single man. JPS, 13:79. Because the August 2007 grant deed does not reflect percentage ownership interests attributable to Rahim M. Safdari, Fatima Giti Safdari and Noor Norris, each individual is presumed to hold an undivided 1/3 interest in the Mariposa Pines Property. *Id.* at 14:80. The Mariposa Pines Property has a fair market value of \$885,000.00. *Id.* at 14:81.

On September 25, 2017, Defendants' counsel produced a document entitled "Strictly Private and Confidential Agreement Dated 11/21/2002," in which Noor and Rahim M. Safdari purportedly agreed, among other things: "for purposes of obtaining a loan on the [Mariposa Pines Property], Mr. Norris has agreed to co-sign loan documents with Mr. Safdari in order to provide the financial backing necessary to complete the loan." JPS, 14:83. On June 13, 2007, Noor executed a Subordination Agreement related to the Mariposa Pines Property. Zamora Decl., ¶ 91; Trial Exh. 26. In July 2007, Noor executed a deed of trust to the Mariposa Pines Property, in favor of Washington Mutual Bank; that deed of trust was recorded on August 2, 2007. Zamora Decl., ¶ 91; Trial Exh. 27.

***G. The Adversary Proceeding***

On April 6, 2017, Plaintiff filed a complaint against Defendants, initiating this adversary proceeding. Plaintiff requested revocation of Defendants' discharge pursuant to 11 U.S.C. §§ 727(d)(1) and (d)(2). On November 28, 2017, Plaintiff filed a first amended complaint (the "FAC") [doc. 24].

On January 10, 2018, the parties filed the JPS [doc. 27]. In the JPS, the parties agreed that the Court would try Plaintiff's claims under 11 U.S.C. §§ 727(d)(1) and (d)(2). On January 25, 2018, the Court entered an order setting dates and deadlines for trial and approving the JPS [doc. 28].

On May 29, 2018, Plaintiff filed her trial brief ("Plaintiff's Trial Brief") [doc. 30]. On the same day, Plaintiff filed her declaration in lieu of live direct testimony [doc. 31] and an amended exhibit list [doc. 32].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

On June 5, 2018, Defendants filed their trial brief ("Defendants' Trial Brief") [doc. 35]. On the same day, Defendants filed the declaration of Noor Norris in lieu of live direct testimony [doc. 33]. On June 12, 2018, Plaintiff filed a reply to Defendants' Trial Brief [doc. 38].

On September 26, 2018, the Court held trial on Plaintiff's claims. In the FAC and Plaintiff's Trial Brief, Plaintiff asserts the Court should revoke Defendants' discharge based on the following inaccuracies and omissions:

- (1) Defendants' schedules did not list the Two Condo Units. These were not disclosed until the January 2015 Meeting. At the Rule 2004 Exam, Plaintiff discovered that Defendants failed to disclose an additional four units, revealing that the statements made in Defendants' schedules and the Meetings of Creditors were perjurious. Doc. 24, 20:95a.
- (2) Defendants' schedules and amendments thereto and testimony at the Meetings of Creditors did not disclose the Contract Right. *Id.* at 20:95b.
- (3) Defendants' bankruptcy schedules and all amendments did not list Defendants' interests in American Eagle Oil or WECT – California. Despite multiple amendments to Defendants' schedules, Defendants have not amended their schedules to include their interests in these entities. *Id.* at 20:95c.
- (4) Defendants' schedules and amendments thereto and testimony at the Meetings of Creditors did not disclose Noor's ownership interest in the Mariposa Pines Property. *Id.* at 20:95d.

In Defendants' Trial Brief, Defendants argue as follows:

- (1) Defendants hired the wrong lawyer to file their initial schedules. *Id.* at 1:21-22.
- (2) Every asset Plaintiff could liquidate was disclosed in either Defendants' schedules or in Noor's testimony. *Id.* at 1:28-2:1-2.
- (3) Plaintiff knows of all the assets she claims have been omitted; she has not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**NOOR NORRIS**

**Chapter 7**

made any attempt to sell any of them because they are not saleable. *Id.* at 2:20-22

- (4) Defendants asked to convert to chapter 11 so Noor could work to repay creditors. At great personal danger, Noor went to Afghanistan, during a war, to obtain contracts delivering oil products, and he brought his income back to the estate. *Id.* at 1:22-27.

## **II. LEGAL STANDARDS FOR REVOCATION OF DISCHARGE**

### ***A. 11 U.S.C. § 727(d)(1)***

Pursuant to 11 U.S.C. § 727(d)—

"On request of a 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...."

*See also In re Guadarrama*, 284 B.R. 463, 469 (C.D. Cal. 2002). "[R]evocation is an extraordinary remedy." *In re Bowman*, 173 B.R. 922, 924 (B.A.P. 9th Cir. 1994). Consequently, "[§] 727's [revocation] of discharge is construed liberally in favor of the debtor and strictly against those objecting to discharge." *Guadarrama*, 284 B.R. at 469 (quoting *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986)).

#### ***1. Discharge Obtained Through Fraud***

With respect to the issue of fraud, "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." *Bowman*, 172 B.R. at 925 (internal citations omitted).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT... NOOR NORRIS

Chapter 7

A showing that the debtor's fraud would have resulted in a denial of discharge under § 727(a) is sufficient to satisfy the fraud component of § 727(d)(1). *See, e.g. Jones v. U.S. Trustee*, 736 F.3d 897, 900 (9th Cir. 2013) (holding that "a material fraud, which would have resulted in the denial of a Chapter 7 discharge had it been known at the time of such discharge, can justify subsequent revocation of that discharge under 11 U.S.C. § 727(d)(1)"); *Guadarrama*, 284 B.R. at 469 ("to secure revocation of [debtor's] discharge, the Trustee was required to show that the fraud in which [debtor] engaged would have caused the bankruptcy court to deny her a discharge under § 727(a)(4)(A) had it been known at the time.")

***2. Awareness of Fraud Prior to Discharge***

"The party seeking revocation bears the burden of proving that they did not know of the alleged fraud until after the discharge was granted. . . . [F]ailure to carry this burden is fatal to the party's case." *In re Shepard*, 2011 WL 1045081, at \*4 (Bankr. D. Md. March 16, 2011)(internal citation and quotation marks omitted); *see also Mid-Tech Consulting, Inc. v. Swendra*, 938 F.2d 885, 888 (8th Cir. 1991)("[D]ismissal of a § 727(d)(1) revocation action is proper where, before discharge, the creditor knows facts such that he or she is put on notice of possible fraud.")

"If a creditor or any other party which might object to a debtor's discharge has knowledge of a possible fraud, the burden is on the objecting party to diligently investigate any possible fraudulent conduct before discharge. If the party decides to wait until after discharge, that party risks dismissal of its § 727(d)(1) action." *Bowman*, 172 B.R. at 925; *see also Guadarrama*, 284 B.R. at 477 ("Discovery of fraud for purposes of § 727(d) occurs when one 'obtains actual knowledge of the facts giving rise to the action or notice of the facts, which in the exercise of reasonable diligence, would have led to actual knowledge.'" (quoting *Kahn v. Kohlberg, Kravis, Roberts & Co.*, 970 F.2d 1030, 1042 (2d Cir.), *cert. denied*, 506 U.S. 986, 113 S.Ct. 494, 121 L.Ed.2d 432 (1992))). *But see In re Dietz*, 914 F.2d 161, 164 (9th Cir. 1990) (affirming bankruptcy court's revocation of discharge; "[a]lthough the [chapter 7 trustee] became aware" within the 60-day period for objecting to discharge of debts



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT...

**NOOR NORRIS**

**Chapter 7**

that a "[bank] account existed and that Dietz had written a check on that account . . . , [the chapter 7 trustee] did not know that the funds in the account were estate assets. Indeed, Dietz had informed the chapter 7 trustee that the funds in the account were the proceeds of a loan. . . . [S]ufficient evidence supported the finding that [the trustee] learned of the critical fact - Dietz's unauthorized use of estate funds - after the effective date of discharge.")

***B. Application of 11 U.S.C. § 727(a)(4)(A)***

Pursuant to 11 U.S.C. § 727(a)(4)(A), the court shall not grant a debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case—made a false oath or account." 11 U.S.C. § 727(a)(4)(A). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005). "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010) (internal quotations and citation omitted).

To prevail on a claim under § 727(a)(4)(A), the plaintiff must show, by a preponderance of the evidence, that: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *Id.*, at 1197.

***1. Materiality***

"A false statement is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999); *see also Guadarrama*, 284 B.R. at 473 ("A false statement or omission is material if it concerns information that would aid in understanding the debtor's financial affairs.") "[A]n omission or misstatement relating to an asset that is of little value or that would not be property of the estate is material if the omission or misstatement detrimentally affects administration of the estate." *Wills*, 243 B.R. at 63.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT...

NOOR NORRIS

Chapter 7

***2. Knowingly and Fraudulently***

"A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (internal quotation marks omitted). To demonstrate fraudulent intent, a plaintiff has "the burden of showing that: (1) [defendant] made the representations [e.g., a false statement or omission in bankruptcy schedules]; (2) . . . at the time *he knew they were false*; [and] (3) . . . he made them with the *intention and purpose of deceiving the creditors*." *Id.*, at 1198-99 (emphasis in original; internal quotations omitted).

"Intent is usually proven by circumstantial evidence or by inferences drawn from the debtor's conduct." *Id.*, at 1199. "[M]ultiple omissions of material assets or information may well support an inference of fraud if the nature of the assets or transactions suggests that the debtor was aware of them at the time of preparing the schedules and that there was something about the assets or transactions which, because of their size or nature, a debtor might want to conceal." *In re Coombs*, 193 B.R. 557, 565-66 (Bankr. S.D. Cal. 1996). "The fact of prompt correction of an inaccuracy or omission may be evidence probative of lack of fraudulent intent." *In re Searles*, 317 B.R. 368, 377 (B.A.P. 9th Cir. 2004) *aff'd*, 212 F. App'x 589 (9th Cir. 2006).

***C. 11 U.S.C. § 727(d)(2)***

Pursuant to 11 U.S.C. § 727(d)—

"On request of a 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—

- (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**NOOR NORRIS**

trustee."

**Chapter 7**

"To revoke a debtor's discharge under § 727(d)(2), the trustee must prove (1) that the debtor acquired, or became entitled to acquire, property of the bankruptcy estate and (2) the debtor knowingly and fraudulently failed to report or deliver such property to the trustee." *In re Michaels*, No. ADV. RS 05-01429-PC, 2009 WL 7809926, at \*9 (B.A.P. 9th Cir. Feb. 27, 2009) (citing *In re Bowman*, 173 B.R. 922, 925–26 (B.A.P. 9th Cir. 1994); *In re Yonikus*, 974 F.2d 901 (7th Cir.1992)).

"[R]egarding the first element,...‘debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate.’" *Michaels*, 2009 WL 7809926, at \*9 (citing *Yonikus*, 974 F.2d at 904). *See also Vockner v. Battley*, 122 F.3d 1076 (9th Cir. 1997) (citing 4 *Collier on Bankruptcy* ¶ 727.15[4] at 727-113 (15th ed.1996)) (§ 727(d)(2) "imposes a duty upon the debtor to report to the trustee any acquisitions of property subsequent to the filing of the petition.") (emphasis added). "As to the second element,...a finding of fraudulent intent may be based on inferences drawn from a course of conduct, or inferred from all the surrounding circumstances or the debtor's ‘whole pattern of conduct.’" *Id.* (citing *In re Devers*, 759 F.2d 751, 753–54 (9th Cir.1985)).

### **III. ANALYSIS REGARDING DISCHARGE OF DEFENDANTS**

#### ***A. 11 U.S.C. § 727(d)(1)***

##### ***1. Revocation Based on Defendants’ Disclosures Before the Deadline to File an Objection to Defendants’ Discharge***

In the FAC, Plaintiff argues that Defendants’ discharge should be revoked under § 727(d)(1) based on the following grounds: (1) the Two Condo Units were not disclosed until the January 2015 Meeting; (2) Defendants’ lack of disclosure in their schedules and testimony at the Meetings of Creditors; and (3) Defendants’ schedules and all amendments thereto did not list their interest in Norris Group dba WECT –

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

California. Under § 727(d)(1), Plaintiff must show that she was unaware of the alleged fraud in time to take action to preclude Defendants' receipt of a discharge.

On November 20, 2014, Plaintiff was re-appointed chapter 7 trustee. The deadline by which to file an objection to Defendants' discharge was February 6, 2015. Plaintiff had two months before the deadline to object to Defendants' discharge. Because the following omissions became apparent before that deadline, they cannot be used as grounds for revoking Defendants' discharge:

- Defendants did not list any equipment on their Initial Schedules or subsequent amendments, yet sold \$120,000.00 worth of equipment during their chapter 11 case.
- In their Initial Schedules and First Amended Schedules, Defendants excluded \$14,050.00 in income from real property.
- At the August 2011 Meeting, when questioned whether Dubai Auto still retained ownership of any vehicles, Noor responded in the negative. However, in their Second Amended Schedules, Defendants increased the fair market value of their ownership interest in Dubai Auto, apparently based on Dubai Auto's ownership of inventory and accounts receivable.
- Contrary to Defendants' representations in their Initial Schedules, that their combined salary was \$1,287.50 per month and that Noor was employed for ten years as a "Property Manager," at the August 2011 Meeting, Noor testified that he had worked for fourteen to fifteen years at American Eagle Oil as a supervisor and that he received a commission of \$4,000.00 to \$6,000.00 a month.
- In their First Amended Schedule I (filed in September 2011), Defendants continued to present the inaccurate descriptions of their combined salary and Noor's alleged employment as a "Property Manager."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

CONT...

**NOOR NORRIS**

**Chapter 7**

- At the September 2011 Meeting, Noor testified that he was a shareholder of Norris Group. Defendants never amended their schedules or SOFA to include their interest in the Norris Group dba WECT – California.

Plaintiff learned of Defendants’ alleged interest in Norris Group dba WECT – California at the September 2011 Meeting. Plaintiff learned of Defendants’ interest in the Two Condo Units at the January 2015 Meeting. Both of these meetings were before the deadline. As such, Plaintiff cannot show that she was unaware of Defendants’ interests in Norris Group dba WECT – California and the Two Condo Units in time to take action to preclude Defendants’ receipt of a discharge.

Defendants may have made false oaths on their schedules and in their testimony at the Meetings of Creditors. However, Plaintiff was sufficiently aware of the flaws in Defendants’ representations in time to file an objection to discharge. Plaintiff was aware of all three amendments to Defendants’ schedules before the deadline to object to discharge. Further, based on Defendants’ testimony at the August 2011 Meeting, the September 2011 Meeting and the January 2015 Meeting, Plaintiff knew that Defendants’ schedules were inaccurate. As such, Plaintiff had knowledge of a possible fraud before the deadline to object to Defendants’ discharge.

Plaintiff had the burden to investigate any fraudulent conduct diligently before the deadline to object to discharge. As such, evidence of false oaths that became apparent before the deadline cannot be used as grounds for revoking Defendants’ discharge. The Court will not revoke either Defendants’ discharge under § 727(d)(1) based on Defendants’ disclosures and testimony that occurred before the deadline to file an objection to their discharge.

***2. Revocation Based on Events After the Deadline to File an Objection to Defendants’ Discharge***

***i. Noor Norris***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

Plaintiff has proven, by a preponderance of the evidence, that Noor obtained his discharge through fraud. As noted above, a showing that Noor would be denied a discharge under § 727(a)(4)(A) is sufficient to show that Noor obtained his discharge through fraud. *Jones*, 736 F.3d at 900.

At the January 2015 Meeting, Noor testified that all Defendants' assets were listed in their schedules as amended. However, the Mariposa Pines Property, the Six Condo Units and the Contract Right were not listed in their schedules. Noor omitted his interest in the Mariposa Pines Property, the Six Condo Units and the Contract Right from his Initial Schedules and SOFA, his First Amended Schedules and SOFA, his Second Amended Schedules and SOFA and his Third Amended Schedules. These omissions are material because they relate to Noor's "business transactions or estate, or...the discovery of assets, business dealings, or the existence and disposition of [Noor's] property." *Wills*, 243 B.R. at 62.

In *In re Khalil*, the Bankruptcy Appellate Panel for the Ninth Circuit affirmed the bankruptcy court's judgment denying a debtor's discharge under 11 U.S.C. § 727(a)(4)(A). 379 B.R. 163 (B.A.P. 9th Cir. 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009). "The bankruptcy court found that [d]ebtor made numerous, substantial, and conscious omissions from his bankruptcy schedules and statement of financial affairs, that [d]ebtor's explanations were not persuasive, that he chose not to correct these inaccuracies when he had the opportunity, and that he had the requisite intent to deceive." *Id.* at 177. The debtor in *Khalil* omitted from his schedules and statement of financial affairs several prepetition transfers involving his family members and the family members were not listed as creditors or co-debtors. *Id.* at 167. Similarly, Noor has made numerous, substantial and conscious omissions from his schedules and SOFAs, which are discussed below. Noor has also failed to correct the inaccuracies when he has had the opportunity.

Noor's omission of the Mariposa Pines Property appears to be knowing and fraudulent. On June 13, 2007, Noor executed a Subordination Agreement related to the Mariposa Pines Property. On August 2, 2007, a deed of trust to the Mariposa Pines

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

Property executed by Noor was recorded. Further, a grant deed dated August 3, 2007, recorded in the Los Angeles County Recorder's Office, reflects that Noor has a significant interest in the Mariposa Pines Property. Defendants' Initial Schedules and any subsequent amendments do not include Noor's interest in the Mariposa Pines Property, and Noor never disclosed his interest in the Mariposa Pines Property during any of the Meetings of Creditors or the Rule 2004 Exam. Moreover, Plaintiff had no knowledge of the Mariposa Pines Property before the deadline to object to Defendants' discharge. Zamora Decl., ¶ 89.

The Court finds that Noor also knowingly and fraudulently omitted the Six Condo Units and Contract Right from his schedules and SOFAs. Noor did not disclose his interest in the Two Condo Units until the January 2015 Meeting, *i.e.* four years after Defendants filed their bankruptcy petition, after Defendants amended their schedules and SOFA three times and testified at two meetings of creditors.

Defendants never amended their schedules to include the Six Condo Units or disclosed them during any of the Meetings of Creditors. Further, Noor knew of his interest in the Contract Right; he asked for a return of his monies in 2014 (three years after Defendants filed their petition), but did not disclose it to Plaintiff any time before the deadline to object to his discharge. Like his nondisclosure of the Mariposa Pines Property, Noor's nondisclosure of the Six Condo Units and the Contract Right was knowing and fraudulent. [FN4] [FN5]. Moreover, Plaintiff had no knowledge of the Six Condo Units and the Contract Right before the deadline to object to Defendants' discharge. Zamora Decl., ¶¶ 81-88.

In the Defendants' Trial Brief, Defendants assert the following defenses: (1) their first lawyer was incompetent; (2) they did not omit any assets that Plaintiff can liquidate; and (3) Noor traveled to Afghanistan to generate income to pay Defendants' creditors.

When erroneous information in their schedules should be evident, debtors may not hide behind their reliance on counsel. *Retz*, 606 F.3d at 1199. In contrast to their current contention, during their first § 341(a) meeting of creditors, Defendants affirmed under oath that they had read their petition, schedules and statements before

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

they signed them, were personally familiar with the information which they contained and that this information was true and correct. Lodged Transcript for the August 2011 Meeting, p. 4.

Further, Defendants retained their current lawyer a few months into their bankruptcy case. On October 28, 2011, Defendants filed a *Substitution of Attorney* naming their current counsel as attorney of record [Bankruptcy Case, doc. 25]. After that date, Defendants filed amended schedules twice more. Defendants signed those amended schedules under penalty of perjury, but still failed to provide a full and accurate disclosure of their assets.

"[D]ebtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." *Yonikus*, 974 F.2d at 904. Whether or not Plaintiff can liquidate Defendants' interests in the Mariposa Pines Property and the Contract Right, Defendants had a duty to report those interests to Plaintiff. Noor failed to meet that duty by never disclosing these assets in Defendants' Initial Schedules and subsequent amendments or during the Meetings of Creditors.

Noor's efforts in Afghanistan, which generated postpetition income, do not negate the Court's finding of fraud. Noor's postpetition employment and the proceeds generated from his employment do not signify that he made full and accurate representations about his prepetition assets. Having provided misleading and incomplete testimony during the Meetings of Creditors, having filed incomplete and misleading schedules and statements and having omitted material assets, Noor made false oaths.

For the foregoing reasons, because Noor knowingly and fraudulently made false oaths related to material facts in his schedules and SOFA concerning his interest in the Mariposa Pines Property, the Six Condo Units and the Contract Right, the Court finds that Noor obtained his discharge through fraud and that his discharge is appropriately revoked pursuant to § 727(d)(1).

**ii. Hely Norris**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT... NOOR NORRIS

Chapter 7

Plaintiff has not met her burden of proof in regards to Hely. Plaintiff has not shown that Hely obtained a discharge through fraud.

Hely is not on the title to the Mariposa Pines Property. Trial Exh. 23. Nor is Hely a party on the Condo Contract. Trial Exh. 42. Further, Noor alone requested that funds be paid for his purchase of the Six Condo Units (Trial Exh. 44) and alone sought a return of the investment. Plaintiff did not call Hely as a witness to establish that Hely knew of Noor's interest in the Mariposa Pines Property, the Six Condo Units or the Contract Right. Moreover, none of the exhibits presented regarding the Mariposa Pines Property or the Condo Contract show that Hely was involved or even aware of those transactions. As such, Plaintiff has not shown that Hely knowingly omitted these assets from Defendants' schedules and SOFA with the purpose and intention of deceiving Defendants' creditors.

Plaintiff argues that Hely should not be afforded any separate discharge because "Hely's participation in the active concealment of assets in the case renders her disqualified from receiving a discharge in her own right." Plaintiff's Trial Brief, p. 4, FN2. Plaintiff cites *In re Covino*, 241 B.R. 673, 688 (Bank. D. Idaho 1999), for the proposition that "a debtor who sees an indirect benefit from a fraud in which he/she participates is sufficient to prevent the debtor from receiving the benefit of discharge." Plaintiff's Trial Brief, p. 4, FN2.

In *Covino*, the debtors ran a paintball business prior to filing their bankruptcy petition. *Covino*, 241 B.R. at 680. Postpetition, the debtors "executed a bill of sale, in their personal names, conveying the paintball business assets" to a third party. *Id.* at 683. The bill of sale averred that both the debtors owned the property sold. *Id.* The debtors used the proceeds from the sale to pay obligations owed by them. *Id.*

The court in *Covino* explained that "[t]he Plaintiff bears the burden of proof, Rule 4005, and must establish all requisite elements of the cause of action by a standard of preponderance of the evidence." *Id.* at 677. "Once a prima facie case has been established, the Defendants must support the bona fides of the alleged transactions

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**NOOR NORRIS**

**Chapter 7**

and their version of events." *Id.* at 678. The court found that the plaintiff in *Covino* presented a prima facie case, and it was then up to the debtors to present evidence or explanation to show that they lacked knowledge of the improper conduct.

*Covino* is distinguishable from this case. In *Covino*, the plaintiff was able to establish a prima facie case because both debtors signed the bill of sale and the bill of sale averred that both debtors owned the property sold. Here, Plaintiff has not established a prima facie case with regard to Hely. Plaintiff presented no evidence that Hely participated in the acquisition or encumbrance of the Mariposa Pines Property. Plaintiff similarly presented no evidence that Hely participated in the purchase of the Six Condo Units or demand for a refund of the investment under the Contract Right. Moreover, Plaintiff has not shown that Hely received an indirect benefit. Plaintiff presented no evidence that the Six Condo Units produced income for Defendants or that Defendants ever received a refund of their investment under the Contract Right.

Plaintiff states that "Hely's testimony waivers back and forth several times in the 341(a) meetings and the rule 2004 exam - stating multiple times that she either did not know about the financial affairs of her family, or alternatively , that she in fact did read, understand, and sign all of the relevant bankruptcy schedules, and was the bookkeeper for one of the Debtors' tenant's businesses." Plaintiff's Trial Brief, p. 4, FN2. Even if Hely read, understood and signed all relevant bankruptcy schedules and was the bookkeeper for one of Defendants' tenant's businesses, that does not show that Hely had knowledge of the Mariposa Pines Property, the Six Condo Units or the Contract Right, and Plaintiff has not shown that Hely received an indirect benefit from a fraud in which she participated. Therefore, the Court will not revoke Hely's discharge under § 727(d)(1).

**B. 11 U.S.C. § 727(d)(2)**

Regarding the first element of § 727(d)(2), Plaintiff has not shown that Defendants failed to report to her any pertinent acquisitions of property subsequent to the filing of their petition. In Plaintiff's Trial Brief, Plaintiff argues that the Court should revoke Defendants' discharge pursuant to § 727(d)(2) based on the following grounds: (1) the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

Six Condo Units; and (2) the Contract Right.

Prepetition Defendants invested \$1,098,903.94 in Six Condo Units. The Condo Contract entitled Defendants to a return of 80% of the investment if the units were not completed on time. The units were to be completed at the end of December 2009.

Trial Exh. 42. Defendants did not file their petition until July 2011. As such, Defendants' interest in the Six Condo Units and the Contract Right was prepetition.

Plaintiff cites *Chen v. Shoenmann*, 476 F. App'x 657, 658 (9th Cir. 2011). However, *Shoenmann* is distinguishable from this case. In *Shoenmann*, the debtor *received* postpetition payments on account of a prepetition loan. Here, Plaintiff did not provide evidence that Defendants ever received any postpetition return based on the Contract Right. Consequently, the Court will not revoke either Defendants' discharge under § 727(d)(2).

#### **IV. CONCLUSION**

The Court will enter judgment against Noor Norris and in favor of Hely Norris.

Plaintiff must submit the judgment within seven (7) days.

#### **FOOTNOTES**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets.
2. An order of discharge has not actually been entered yet. However, when a trustee discovers fraud perpetrated by the debtor before a discharge is entered, but after the objection-bar date has run, an action must be brought under 11 U.S.C. § 727(d) as opposed to 11 U.S.C. § 727(a). See *In re Stevens*, 107 B.R. 702, 703 (B.A.P. 9th Cir. 1989).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 24, 2018

Hearing Room 301

2:30 PM

CONT...

NOOR NORRIS

Chapter 7

3. It later became apparent that, as of the petition date, Defendants held an 18.3% ownership in WECT. JPS, 7:36. On January 19, 2017, Plaintiff sold Defendants' interest in WECT for \$425,000.00 [Bankruptcy Case, doc. 498].
4. Regarding American Eagle Oil, in their Second Amended Schedules (filed January 2012), Defendants disclosed their interest in WECT. In response to documents requested by the Rule 2004 Motion, Defendants stated that American Eagle Oil is a dba of WECT. Trial Exh. 45, p. 2. The evidence presented by Plaintiff at trial does not contradict this representation. Trial Exhs. 30 and 31. As such, Plaintiff has not shown that Defendants' omission of "American Eagle Oil" from their Schedules and SOFA was done with fraudulent intent.
5. Regarding Afghan American, Plaintiff presented evidence which shows that Afghan American was formed in 2014. Trial Exh. 21. This was three years after Defendants filed their bankruptcy petition. Schedules and the statement of financial affairs concern assets as of the *petition date*. *In re Coombs*, 193 B.R. 557, 565 (Bankr. S.D. Cal. 1996) (citing *In re Bailey*, 147 B.R. 157, 162-63 (Bankr. N.D. Ill. 1992)) ("Debtors...have an affirmative duty to disclose on their schedules of assets whatever ownership interest they hold in any property, inclusive of all legal and equitable interest in said property, *as of the commencement of a bankruptcy case*." (emphasis added). Consequently, Defendants' nondisclosure of an interest in Afghan American in their schedules and SOFA do not call for revocation of their discharge.

<b>Party Information</b>
--------------------------

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E Mcgoldrick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 24, 2018**

**Hearing Room 301**

2:30 PM

**CONT... NOOR NORRIS**

**Chapter 7**

**Defendant(s):**

NOOR NORRIS

Pro Se

HELY NORRIS

Pro Se

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E Mcgoldrick

**Plaintiff(s):**

Nancy J. Zamora, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 25, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#1.00** Chapter 7 Trustee's second interim application for compensation and reimbursement of expenses

fr. 10/18/18

Docket 158

**Tentative Ruling:**

The Court will continue this hearing to November 1, 2018 at 10:30 a.m.

Appearances on October 25, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 25, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#2.00** Final application for approval of of compensation and expense reimbursement of Baker & Hostetler LLP, for the period of November 26, 2016 through and including May 2, 2018

fr. 10/18/18

Docket 159

**Tentative Ruling:**

The Court will continue this hearing to November 1, 2018 at 10:30 a.m.

Appearances on October 25, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 25, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#3.00** Application for payment of interim fees and/or expenses (11 U.S.C. § 331) of Foley & Lardner LLP, attorneys for Trustee's Period: 5/2/2018 to 8/31/2018

fr. 10/18/18

Docket 161

**Tentative Ruling:**

The Court will continue this hearing to November 1, 2018 at 10:30 a.m.

Appearances on October 25, 2018 are excused.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, October 25, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#4.00** Application for payment of interim fees and expenses  
of Berkeley Research Group, LLC Accountant  
period: 11/1/2016 to 8/15/2018

fr. 10/18/18

Docket 151

**Tentative Ruling:**

The Court will continue this hearing to November 1, 2018 at 10:30 a.m.

Appearances on October 25, 2018 are excused.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Monday, October 29, 2018**

**Hearing Room 301**

10:00 AM

**1:16-10166 Alice Sungjin Cheong**

**Chapter 7**

Adv#: 1:16-01062 Kim et al v. DOES 1 through 10, inclusive

**#1.00** Motion to vacate amended default judgment against debtor/  
defendant Alice Sungjin Cheong

[EVIDENTIARY HEARING]

fr. 7/18/18; 8/1/18

Docket 72

\*\*\* VACATED \*\*\* REASON: Notice of withdrawal filed 10/25/18 [doc.  
100].

<b>Party Information</b>
--------------------------

**Debtor(s):**

Alice Sungjin Cheong Pro Se

**Defendant(s):**

DOES 1 through 10, inclusive Pro Se

**Plaintiff(s):**

Mi Hee Kim Represented By  
Daren M Schlecter  
Konrad L Trope  
Kaela Haydu

KYUNG CHUL KIM Represented By  
Daren M Schlecter  
Kaela Haydu

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10880 LaFaye Francisco**

**Chapter 13**

**#1.00** Motion for relief from stay [RP]

HSBC BANK USA  
VS  
DEBTOR

fr. 10/10/18

Docket 35

**\*\*\* VACATED \*\*\* REASON: APO entered 10/19/2018.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

LaFaye Francisco

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10463 Shawn Adam Johnson and Taniesah Evans**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 8/8/18; 9/12/18;

Docket 43

**\*\*\* VACATED \*\*\* REASON: APO entered on 9/14/18 [doc. 50].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shawn Adam Johnson

Represented By  
Joshua L Sternberg

**Joint Debtor(s):**

Taniesah Evans

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11993 Suzie Kang**

**Chapter 7**

**#3.00 Motion for relief from stay [UD]**

PETER GEZOUKIAN  
VS  
DEBTOR

Docket 11

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

Grant movant's request to annul the automatic stay.

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

With respect to the debtor's conduct, the debtor did not include movant in her master mailing list. The debtor did not provide notice to movant of the filing of the case until August 22, 2018. The debtor acted unreasonably and inequitably by not providing timely notice of the commencement of the case to movant. Further, the debtor has failed to make her monthly rent payment since August 1, 2018. Consequently, retroactive relief from the automatic stay is appropriately granted here.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Suzie Kang**

**Chapter 7**

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Suzie Kang	Pro Se
------------	--------

**Movant(s):**

Peter Gezoukian	Pro Se
-----------------	--------

**Trustee(s):**

Nancy J Zamora (TR)	Pro Se
---------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11900 Maryam Hadizadeh**

**Chapter 7**

**#4.00** Motion for relief from stay [AN]

DANNY PAVEHZADEH  
VS  
DEBTOR

Docket 23

**Tentative Ruling:**

The Court will continue the hearing until January 16, 2019 at 9:30 a.m.

**I. BACKGROUND**

On August 10, 2017, Danny Pavehzadeh ("Movant") filed a complaint against Shahn timer Ebrahimi ("Ebrahimi") in the Superior Court of California, County of Los Angeles (the "State Court"), alleging breach of contract, breach of implied covenant of good faith and fair dealing and fraud (the "State Court Action") [doc. 23, Exh. 1]. Movant's claims stem from several alleged loans that he made to Ebrahimi in 2014, totaling \$417,000.00, and Ebrahimi's alleged failure to repay Movant. *Id.* On February 28, 2018, the State Court set a final status conference for September 28, 2018, and a jury trial for October 9, 2018. *Id.*, Exh. 3.

On March 20, 2018, Ebrahimi filed a cross-complaint against Movant and added Maryam Hadizadeh ("Debtor") as a cross-defendant, alleging fraud, intentional infliction of emotional distress and negligence (the "Cross-Complaint"). *Id.*, Exh. 2. In the Cross-Complaint, Ebrahimi claims that Movant and Debtor told him they were giving him various sums of money to invest in an operating business, however, they were actually in a conspiracy to hide and transfer illicit money obtained through Medicare fraud.

On July 28, 2018, Debtor filed a voluntary chapter 7 petition. On August 3, 2018, Debtor filed a notice of automatic stay in the State Court Action. *Id.*, Exh. 4. On

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Maryam Hadizadeh**

**Chapter 7**

August 31, 2018, the State Court issued a minute order staying the final status conference and the jury trial, and set a status conference regarding the status of Debtor's bankruptcy case for November 28, 2018. *Id.*, Exh. 5.

Debtor and Movant also have a pending marital dissolution proceeding before a California family law court. The family law court has not divided community property assets between the parties [Declaration of Todd A. Frealy, doc. 28, Exh. A].

On October 5, 2018, Movant filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") [doc. 23]. On October 17, 2018, the chapter 7 trustee (the "Trustee") filed an opposition to the Motion (the "Trustee's Opposition") [doc. 28]. Also on October 17, 2018, Debtor filed an opposition to the Motion [doc. 29]. On October 24, 2018, Movant filed a reply to the Trustee's Opposition and the Debtor's Opposition (the "Reply") [doc. 31].

The deadline to file a proof of claim was October 9, 2018. Ebrahimi did not file a claim in Debtor's case. The deadline to object to discharge is November 6, 2018. As of this hearing, Ebrahimi has not filed an objection to Debtor's discharge.

## **II. DISCUSSION**

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Maryam Hadizadeh**

**Chapter 7**

- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also In re Sonnax Industries, Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990) (listing factors). When applied to the pending Motion and case, the *Curtis* factors do not appear to support relief from the automatic stay at this time.

***1. Whether the relief will result in a partial or complete resolution of the issues***

This factor does not weigh in favor of relief, because, as articulated in the Trustee's Opposition, allowing the State Court Action to proceed in the State Court would not

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Maryam Hadizadeh**

**Chapter 7**

allow immediate and complete resolution of the dispute between Movant, Ebrahimi and Debtor. At issue in the State Court Action is whether funds given to Ebrahimi constituted a loan or an investment.

In his Reply, Movant argues that the funds given to Ebrahimi were his separate property; however, the funds given to Ebrahimi may have been community property. In that case, the bankruptcy estate may have an interest in the subject of the State Court Action. This Court would have exclusive jurisdiction to administer such assets.

In the Trustee's Opposition, the Trustee argues that Movant should not be permitted to proceed with litigation in the State Court Action until the Trustee has an opportunity to investigate the nature of the bankruptcy estate's interest, if any, in the property that is the subject of the State Court Action. The Court agrees with the Trustee.

***2. The lack of any connection with or interference with the bankruptcy case***

In the Trustee's Opposition, the Trustee correctly argues that there is potentially a connection with the bankruptcy estate because the estate may have an interest in the property that is the subject of the State Court Action. Allowing Movant to proceed with the State Court Action could interfere with the bankruptcy estate and the Trustee's administration of estate property.

***3. Whether the foreign proceeding involves the debtor as a fiduciary***

It is unclear whether Debtor had a fiduciary duty to Ebrahimi, and whether the conduct alleged in the Cross-Complaint would violate a fiduciary duty, if one was created.

***4. Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

There is no specialized tribunal that has been established to hear the particular causes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

9:30 AM

CONT...

**Maryam Hadizadeh**

**Chapter 7**

of action in the State Court Action and Cross-Complaint. This Court has sufficient expertise to hear a breach of contract action and a fraud action. This Court has exclusive jurisdiction to hear any timely filed action regarding the dischargeability of any claim of Ebrahimi against Debtor.

**5. *Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It does not appear that Debtor has insurance coverage for Ebrahimi's claims.

**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***

This factor is not applicable.

**7. *Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

No such prejudice is evident.

**8. *Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c)***

This factor is not applicable.

**9. *Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).***

This factor is not applicable.

**10. *The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

If Debtor does not have a community interest in the subject of the State Court action,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

9:30 AM

CONT...

**Maryam Hadizadeh**

**Chapter 7**

which has yet to be determined, and Ebrahimi does not timely file a complaint to determine the dischargeability of any claim of Ebrahimi against Debtor, the Court would lift the automatic stay in order for Movant and Ebrahimi to litigate their claims against each other.

***11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

Although the State Court set a date for trial, Movant has not addressed whether the case has progressed to the point where the parties are prepared for trial.

***12. The impact of the stay on the parties and the "balance of the hurt"***

With respect to Ebrahimi's claims, this Court has exclusive jurisdiction to hear any timely filed action regarding the dischargeability of any claim of Ebrahimi against Debtor. It has yet to be seen whether Ebrahimi will file such an action. Moreover, it has yet to be determined whether Debtor has a community interest in the State Court Action. As such, at this time, the Court cannot determine the impact of the stay on the parties and the "balance of the hurt."

**III. CONCLUSION**

In light of the Trustee's Opposition and the *Curtis* factors, the Court will continue this hearing until January 9, 2019 at 9:30 a.m. to allow the Trustee to conduct an investigation. Following that investigation, the Trustee must file and serve any supplement to the Trustee's Opposition no later than January 2, 2019. Movant must file and serve any supplement to Movant's reply no later than January 9, 2019.

**Party Information**

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Todd A Frealy

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Maryam Hadizadeh**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12202 Patricio Alvarez and Vanina Dieguez**

**Chapter 7**

**#5.00** Motion for relief from stay [PP]

VW CREDIT INC  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patricio Alvarez

Represented By  
Sydell B Connor

**Joint Debtor(s):**

Vanina Dieguez

Represented By  
Sydell B Connor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Patricio Alvarez and Vanina Dieguez**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

9:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#6.00 Motion for relief from stay [RP]

JEROME BIDDLE AND SUSAN BIDDLE  
VS  
DEBTOR

Docket 50

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12403 Gloria Tiffany Nicholas**

**Chapter 13**

**#7.00 Motion for relief from stay [UD]**

ROZ MAZEDJIAN  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gloria Tiffany Nicholas

Pro Se

**Movant(s):**

Roz Mazedjian

Represented By  
Paul E Gold

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Gloria Tiffany Nicholas**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

9:30 AM

1:15-11653 ARMANDO O PEREZ and ELSA INCLAN

Chapter 13

#8.00 Motion for relief from stay [PP]

WELLS FARGO BANK, NA  
VS  
DEBTOR

Docket 64

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

ARMANDO O PEREZ

Represented By  
Grace White

**Joint Debtor(s):**

ELSA INCLAN

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

9:30 AM

CONT...

**ARMANDO O PEREZ and ELSA INCLAN**

Grace White

**Chapter 13**

**Movant(s):**

Wells Fargo Bank, N.A. d/b/a Wells

Represented By  
Jennifer H Wang

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:17-12718 Kathleen Magdaleno**

**Chapter 13**

**#9.00** Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC  
VS  
DEBTOR

Docket 38

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kathleen Magdaleno

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:17-11860 Juan Morales and Maria Morales**

**Chapter 13**

**#10.00** Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 49

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Morales

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Maria Morales

Represented By  
Rebecca Tomilowitz

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Juan Morales and Maria Morales**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10944 Martha I Navar**

**Chapter 13**

**#11.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 37

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Martha I Navar

Represented By  
Daniel King

**Movant(s):**

Deutsche Bank National Trust

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Martha I Navar**

Jennifer C Wong

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13160 Shalva Shalom Krihali**

**Chapter 7**

Adv#: 1:18-01009 Zimmerman et al v. Krihali

**#12.00** Pretrial conference re: complaint for determination of dischargeability and objection to debtor's discharge pursuant to section 523(a)(6)

fr. 3/14/18; 3/28/18, 6/6/18; 7/18/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Stipulated judgment entered 10/17/18 [doc. 27].**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shalva Shalom Krihali

Represented By  
Richard Mark Garber

**Defendant(s):**

Shalva Shalom Krihali

Pro Se

**Plaintiff(s):**

Bernadett Zimmerman

Represented By  
Gabor Szabo

Gabor Szabo

Represented By  
Gabor Szabo

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#13.00** Pretrial conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18

Docket 1

**Tentative Ruling:**

The untimely joint pretrial stipulation (the "JPS") filed by the parties on October 26, 2018 does not comply with Local Bankruptcy Rule ("LBR") 7016-1(b)(2), as specified below.

Contrary to LBR 7016-1(b)(2)(C), the parties do not clearly set forth the issues of law to be litigated at trial. The plaintiff's complaint asserts a claim under 11 U.S.C. § 523(a)(6), and the language in the JPS appears to reassert that claim.

In paragraph 41 of the JPS, the parties indicate that the plaintiff intends to request denial of the defendant's discharge under 11 U.S.C. § 727(a)(3). However, the plaintiff has not moved to file an amended complaint. Moreover, because the defendant has already received his discharge, the plaintiff is limited to requesting *revocation* of the defendant's discharge under one of the grounds set forth in 11 U.S.C. § 727(d); any claim for denial of the defendant's discharge under 11 U.S.C. § 727(a) is time barred.

In addition, the parties' exhibit list does not comply with LBR 7016-1(b)(2)(D). The parties do not specify which party is offering which exhibit. Moreover, the parties do not provide an adequate description of each exhibit, which must include information sufficient for identification. For example, the parties do not provide sufficient information for exhibit nos. 24-26 and 28. Have the parties exchanged exhibits they intend to offer at trial?

Contrary to LBR 7016-1(b)(2)(E), the parties have not specified which witness is being offered by which party. The parties also do not provide a summary of the proposed testimony by each witness.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

1:30 PM

CONT... Adir Setton

Chapter 7

The parties list certain doctors in their witness list; do the parties intend to call any of these doctors as expert witnesses? If so, have the parties exchanged narrative statements of the qualifications of the experts? Have the parties exchanged expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2)?

In the paragraph listing their witnesses, the parties state that their witnesses "include, but are not limited to" the listed witnesses. The parties must provide a *complete* list of witnesses. Any witness not listed in the parties' witness list will not be permitted to testify at trial.

Concurrently with submitting their amended joint pretrial stipulation, the parties also must submit a joint witness schedule indicating on which day of trial, and at which time, each witness will testify and estimating the duration of each witness's testimony.

Contrary to LBR 7016-1(b)(2)(F), the parties have not specified if there are any other matters that may affect trial, such as anticipated motions in limine, motions to withdraw reference or other pretrial motions. Moreover, contrary to LBR 7016-1(b)(2)(G), the parties have not indicated if discovery is complete and, contrary to LBR 7016-1(b)(2)(H), the parties have not indicated if they are ready for trial.

Contrary to LBR 7016-1(b)(2)(I), the parties have not provided an estimate of the length of trial. The parties also do not include the language from LBR 7016-1(b)(2)(J) in the JPS.

Finally, the parties have not updated the Court regarding the Court-ordered mediation the parties were required to attend by August 31, 2018 [doc. 19]. Did the parties attend mediation? The parties must be prepared to discuss these issues.

**Party Information**

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10071 LOST COAST RANCH INC.**

**Chapter 7**

Adv#: 1:18-01102 Ocean Ranch LPFN, LLC v. Lost Coast Ranch, Inc. et al

**#14.00** Status conference re notice of removal and order to show cause re remand

Docket 1

**Tentative Ruling:**

**I. BACKGROUND**

On January 9, 2018, Lost Coast Ranch, Inc. ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). In its schedule A/B, Debtor listed a fee simple interest in real property located at 26000 Mattole Road, Petrolia, California 95558 (the "Petrolia Property") [Bankruptcy Docket, doc. 8]. Debtor valued the Petrolia Property at \$10 million. On July 27, 2018, Ocean Ranch LPFN, LLC ("Plaintiff") filed claim no. 5-1 against Debtor's estate, asserting an unsecured claim in the amount of \$385,495.91.

On August 1, 2018, Plaintiff filed a complaint against Debtor and Joseph Flores Beauchamp, Debtor's principal (together with Debtor, "Defendants"), in state court (the "Complaint"), initiating state court case no. BC716331 (the "State Court Action"). Report of State Court Proceedings ("Report") [doc. 6], Exhibit 2. Through the Complaint, Plaintiff asserts causes of action for fraudulent misrepresentation, fraudulent concealment, promissory fraud and unjust enrichment. Report, Exhibit 2. Specifically, the Complaint alleges:

Around late 2017, Plaintiff began negotiating with Defendants to purchase the Petrolia Property. During those negotiations, Mr. Beauchamp represented to Plaintiff that Defendants had the authority to sell the Petrolia Property and transfer title to Plaintiff. In reality, Mr. Beauchamp was filing a series of fraudulent bankruptcy cases to avoid his and Debtor's obligations, and to defraud Plaintiff into paying nearly \$400,000 as a deposit on the Petrolia Property, which Mr. Beauchamp used for his personal benefit.

To prevent a foreclosure sale of the Petrolia Property, Mr. Beauchamp

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**CONT...**

**LOST COAST RANCH INC.**

**Chapter 7**

caused Debtor to file its current bankruptcy case. Neither Mr. Beauchamp nor anyone else informed Plaintiff or its representatives of Debtor's bankruptcy case. Instead, Mr. Beauchamp and Debtor continued to fraudulently negotiate for the sale of the Petrolia Property despite Debtor's bankruptcy filing. On August 22, 2018, Plaintiff and Defendants entered into a residential purchase agreement for the purchase of the Petrolia Property. Mr. Beauchamp convinced Plaintiff to pay a portion of the deposit for the Petrolia Property, in the amount of \$385,495.91, directly to Wells Fargo. Mr. Beauchamp represented that his personal residence was fully cross-collateralized with the Petrolia Property and that there was substantial equity in his personal residence. Mr. Beauchamp further represented that the amount paid to Wells Fargo would be credited towards the purchase price of the Petrolia Property.

Relying on Mr. Beauchamp's representations, Plaintiff wired Wells Fargo \$385,495.91. However, Plaintiff never received title to the Petrolia Property because the Petrolia Property was subject to the control of the Trustee. In light of Debtor's chapter 7 case, Debtor did not have authority to sell the Petrolia Property. Defendants refuse to return Plaintiff's funds.

Subsequently, when Defendants learned that Plaintiff and the Trustee were working towards entering into a lease agreement in connection with the Petrolia Property, Defendants interfered with Plaintiff's use of the Petrolia Property, such as by falsely telling the Trustee that the Petrolia Property could not be occupied because of dangers on the premises.

Complaint, pp. 2-6. As a result of these allegations, Plaintiff requests a judgment against Defendants for general and compensatory damages, punitive damages, attorneys' fees and costs and pre- and post-judgment interest. Complaint, pp. 10-11. Plaintiff also requests a jury trial.

On September 6, 2018, the Trustee removed the State Court Action to this Court. On September 10, 2018, the Court issued an Order to Show Cause re: Remand (the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**CONT... LOST COAST RANCH INC.**

**Chapter 7**

"OSC") [doc. 3]. On September 13, 2018, the Trustee filed a notice of the OSC [doc. 5]. On October 17, 2018, the Trustee filed a response to the OSC and opposed remand of this action (the "Opposition") [doc. 7]. Plaintiff has not filed a response to the Opposition or the OSC and has not timely filed a status report.

**II. DISCUSSION**

In the Opposition, the Trustee requests dismissal of the State Court Action. The Court will not dismiss the State Court Action for lack of prosecution at this time. However, if the Trustee files a motion to dismiss the State Court Action, the Court will entertain a motion to dismiss as to the estate and/or Debtor.

The Trustee should be prepared to discuss the timing for the Trustee to file such a motion to dismiss. Pending the Court's determination of a motion to dismiss the estate and/or Debtor, the Court would stay the adversary proceeding as to Mr. Beauchamp.

If and after a motion to dismiss the estate and/or Debtor is granted, without leave to amend, the Court may remand the State Court Action for Plaintiff to prosecute that action against Mr. Beauchamp.

<b>Party Information</b>
--------------------------

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Defendant(s):**

Lost Coast Ranch, Inc.

Pro Se

Joseph Flores Beauchamp

Pro Se

DOES 1 through 10, inclusive

Pro Se

**Plaintiff(s):**

Ocean Ranch LPFN, LLC

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... LOST COAST RANCH INC.**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10762 Jaime R Lara**

**Chapter 7**

Adv#: 1:18-01100 Weil, Chapter 7 Trustee v. Greater La Escrow, Inc., a California corporation

- #15.00** Status conference re: complaint for:  
1) Turnover of property of the estate;  
2) Declaratory relief; and  
3) Violation of automatic stay

**Stip to continue filed 9/26/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation to continue entered 9/27/18. Hearing continued to 11/21/18 at 1:30 PM.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jaime R Lara	Pro Se
--------------	--------

**Defendant(s):**

Greater La Escrow, Inc., a California	Pro Se
---------------------------------------	--------

Diane E Lara	Pro Se
--------------	--------

**Plaintiff(s):**

Diane C. Weil, Chapter 7 Trustee	Represented By Elissa Miller
----------------------------------	---------------------------------

**Trustee(s):**

Diane C Weil (TR)	Represented By Elissa Miller Claire K Wu
-------------------	--

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

**#16.00** Ruling on trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18;  
7/16/18; 7/30/18

Docket 1

**Tentative Ruling:**

The Court will continue this matter to **2:30 p.m. on November 14, 2018.**

Appearances are excused on October 31, 2018.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#17.00** Defendant's motion to strike amended complaint pursuant to FRCP Rule 12(F) and in the alternative, motion to dismiss amended complaint pursuant to FRCP Rule 12(b)(6) and FRCP Rule 7012

Docket 19

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On February 13, 2018, Jorge Alberto Romero II ("Defendant") filed a voluntary chapter 7 petition. On May 15, 2018, Carlos Acevedo ("Plaintiff") filed a complaint against Defendant, requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2)(A). On July 10, 2018, Defendant filed an answer to the complaint [doc. 8].

On July 20, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 14]. In relevant part, the FAC includes the following allegations:

In July 2007, Defendant and his father, Jorge Romero Sr., advertised two investment companies: Jorge Romero Investment ("JRI") and Global Capital Investments ("Global"). Defendant acted as the president of JRI and Global. Defendant advertised his companies to friends and acquaintances and promised an 8.33% monthly interest for any investments made with the companies. According to Defendant, the lucrative monthly interest was possible because of recently discovered gold in Africa.

On March 1, 2008, Plaintiff signed a contract with Defendant for the sum of \$100,000. Defendant deposited part of the \$100,000 into an account bearing Defendant's signature. In September 2008, Defendant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jorge Alberto Romero II**

**Chapter 7**

sent a letter to Plaintiff stating that all of his assets had been frozen by the United States Securities and Exchange Commission (the "SEC"), and that his companies were under investigation for certain transactions. Nevertheless, Defendant assured Plaintiff that the assets were secured and would be returned to investors "very soon."

In May 2009, Plaintiff contacted the SEC to inquire about the status of the frozen assets. The SEC informed Plaintiff that it had never intervened with Global Capital and did not know of any individual with Defendant's name. After Plaintiff contacted Defendant and his father about the SEC's response, Defendant and Mr. Romero cut off all contact with Plaintiff.

Plaintiff then filed a complaint with the Los Angeles Superior Court, suing Defendant, Mr. Romero, Global Capital and JRI for fraud and breach of contract. During the state court action, Plaintiff discovered that the California Corporation Commissioner uncovered that Mr. Romero had engaged in a Ponzi Scheme. The state court found Defendant and Mr. Romero liable for breach of contract and fraud and awarded Plaintiff \$100,000.

Defendant wrote the letter knowing that the information therein was false and with the sole purpose to mislead Plaintiff. At the state court trial, Mr. Romero was unable to show what happened to Plaintiff's funds. Defendant is attempting to avoid liability by filing for bankruptcy protection.

FAC, pp. 2-5. To the FAC, Plaintiff attached an investment agreement between Plaintiff and Global Capital, which appears to be signed by Defendant, a number of checks issued by Plaintiff to Global Capital and a letter from Defendant, on behalf of Global Capital, to Plaintiff regarding the SEC's purported investigation of Global Capital. FAC, Exhibits A-C. Plaintiff also attached his state court complaint against Defendant, among others (the "State Court Complaint"). FAC, Exhibit D. As concerns the fraud allegations against Defendant, the State Court Complaint includes the following allegations:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, October 31, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Jorge Alberto Romero II**

**Chapter 7**

On February 23, 2008, Defendant, on his own behalf and on behalf of Global Capital, induced Plaintiff into investing with Defendant based on Defendant's representation that Defendant had specific knowledge of outstanding opportunities for a guaranteed high rate of return on Plaintiff's money. This misrepresentation was a material fact and was essential to Plaintiff regarding his decision to enter into the investment agreement. If Plaintiff had known the truth, as opposed to the misrepresentations made by Defendant, Plaintiff would not have entered into the agreement.

At the time the defendants made the false representations to Plaintiff, they knew the representations were false and never intended to pay Plaintiff the promised returns. The knowingly false statements were solely intended to induce Plaintiff to enter into the agreement. Plaintiff justifiably relied on the representations of the defendants because the defendants were in a position of knowledge as investment advisors. As a direct result of the false statements made by the defendants, Plaintiff signed the agreements and gave money to the defendants. The knowingly false statements of Defendant and others were intended to cause injury to Plaintiff.

State Court Complaint, pp. 6-7. The State Court Complaint includes separate allegations against Mr. Romero. State Court Complaint, p. 6. As to Mr. Romero, Plaintiff alleged that Mr. Romero induced Plaintiff to invest into JRI; Plaintiff's allegations against Defendant state that Defendant induced Plaintiff to invest into Global Capital. *Id.*

Plaintiff also attached a tentative decision by the state court on the State Court Complaint (the "Tentative Decision") and an abstract of judgment in favor of Plaintiff. FAC, Exhibits F-G. In the Tentative Decision, issued on August 23, 2010, the state court noted that Defendant did not answer the State Court Complaint. FAC, Exhibit F, p. 4. As to fraud, the state court held that Mr. Romero "is the only person who made the misrepresentations." *Id.*, p. 6. The state court then made additional findings as to Mr. Romero alone, and held that judgment would be entered against Mr. Romero in the amount of \$110,000. *Id.*, pp. 6-7. It is unclear from the record if the Tentative Decision was memorialized in a final judgment.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

On August 22, 2018, Defendant filed a motion to strike the FAC or, in the alternative, dismiss the FAC (the "Motion") [doc. 19]. In the Motion, Defendant contends that Plaintiff did not seek leave of Court to file the FAC. Defendant also asserts that the FAC fails to state a claim under 11 U.S.C. § 523(a)(2)(A). On October 24, 2018, Plaintiff filed an opposition to the Motion [doc. 28].

## **II. ANALYSIS**

### ***A. Federal Rule of Civil Procedure ("Rule") 15(a)***

Pursuant to Rule 15(a)—

(1) *Amending as a Matter of Course*. 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.

(emphasis added). Here, Plaintiff filed the FAC 10 days after Defendant filed his answer. As such, in accordance with Rule 15(a)(1)(B), Plaintiff did not need leave of Court to file the FAC.

### ***B. Rule 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party.

Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). "A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

**C. 11 U.S.C. § 523(a)(2)(A)**

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Here, the FAC includes sufficient allegations to state a claim under § 523(a)(2)(A). The State Court Complaint, which is incorporated into the FAC, includes specific allegations of fraud against Defendant. In the State Court Complaint, Plaintiff alleged fraud related to two different companies: JRI and Global Capital. As to JRI, Plaintiff alleged that Mr. Romero induced Plaintiff to invest with JRI. However, as to Global Capital, Plaintiff specifically alleged in the State Court Complaint that *Defendant*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

induced Plaintiff to invest with Global Capital. As to Defendant, Plaintiff alleged in the State Court Complaint that Defendant made misrepresentations to Plaintiff regarding the returns Plaintiff would receive from Global Capital, thereby inducing Plaintiff to invest in Global Capital. Plaintiff also alleged that Defendant made the misrepresentations with the knowledge that the representations were false. In addition, Plaintiff alleges that he justifiably relied on Defendant's representations and that, as a result of the misrepresentations, Plaintiff was injured.

Although Plaintiff does not specifically allege that Defendant "intended to deceive" Plaintiff, the remaining allegations sufficiently allege an intent to deceive. For instance, Plaintiff alleged that, through his "knowingly false statements," Defendant: (A) never intended to provide Plaintiff any returns; (B) intended to cause injury to Plaintiff; and (C) intended to deprive Plaintiff of Plaintiff's property. Taken together, the allegations in the FAC and the State Court Complaint, which is incorporated into the FAC, are sufficient to state a plausible claim under § 523(a)(2)(A).

The Tentative Decision, also incorporated into the FAC, contradicts Plaintiff's allegations that Defendant made misrepresentations because, in the Tentative Decision, the state court noted that "[Mr. Romero] is the only person who made the misrepresentations." Tentative Decision, p. 6. In the Tentative Decision, the state court differentiated between Defendant, referenced as "Jorge Romero II," and Mr. Romero, referenced as "Jorge Romero." *Id.*, p. 4. As such, the findings in the Tentative Decision appear to relate to Mr. Romero, not Defendant. However, tentative rulings do not have any preclusive effect, and it is unclear from the record if the state court adopted the Tentative Decision as its final ruling. A requirement for application of issue preclusion is that there is a "decision on the issue [that] is final and... on the merits." *S. Sutter, LLC v. LJ Sutter Partners, L.P.*, 193 Cal.App.4th 634, 663 (Ct. App. 2011). "For purposes of issue preclusion, 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." *Id.* (internal quotations omitted).

A prior adjudication of an issue in another action may be deemed "sufficiently firm" to be accorded preclusive effect based on the following factors: (1) *whether the decision was not avowedly tentative*; (2) whether the parties were fully heard; (3) whether the court supported its decision with a reasoned opinion; and (4) whether the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Jorge Alberto Romero II**

**Chapter 7**

decision was subject to an appeal.

*Border Bus. Park, Inc. v. City of San Diego*, 142 Cal.App.4th 1538, 1565 (Ct. App. 2006) (emphasis added). In light of the above, the Tentative Decision is insufficient to determine whether the state court's findings are preclusive. As such, without issue preclusion as a barrier, to cure the contradictory allegations contained in the Tentative Decision, Plaintiff only has to omit the Tentative Decision as an attachment to the FAC. Because Plaintiff is *pro se*, and for the sake of judicial economy, the Court will strike the Tentative Decision from the FAC.

Finally, contrary to the paragraphs 11 and 12 in the FAC, the state court did not indicate in the Tentative Decision that Defendant stood trial, and the Tentative Decision did not include any findings as to Defendant. As such, paragraphs 11 and 12 appear to misstate the findings in the Tentative Decision. However, these seemingly inaccurate allegations do not defeat Plaintiff's allegations under § 523(a)(2)(A), and the Court will strike paragraphs 11 and 12 on the basis that the paragraphs misstate the state court's findings in the Tentative Decision.

### **III. CONCLUSION**

The Court will deny the Motion. Plaintiff must file an answer to the FAC no later than **November 14, 2018**.

The Court will prepare the order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Alberto Romero II

Pro Se

**Defendant(s):**

Jorge Alberto Romero II

Represented By  
Stella A Havkin

**Plaintiff(s):**

Carlos Acevedo

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#18.00** Status conference re: Amended complaint for nondischargeability  
11 U.S.C. 523a (2) debt obtained through fraud, embezzlement  
and false pretenses

fr. 09/12/18;

Docket 14

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to comply with Fed. R. Bankr. P. 7026 and Fed. R. Civ. P. 26(a)(1), (f) and (g): 11/14/18.

Deadline to submit joint status report: 11/28/18.

Continued status conference: 12/12/18 at 1:30 p.m.

The Court will prepare the Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Alberto Romero II Pro Se

**Defendant(s):**

Jorge Alberto Romero II Pro Se

**Plaintiff(s):**

Carlos Acevedo Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, October 31, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**1:15-10698 Rene A Altevain**

**Chapter 7**

**#1.00 Trustee's Final Report and Applications for Compensation**

David Gottlieb, Chapter 7 Trustee

Ervin cohen & Jessup LLP, Attorneys for Trustee

Docket 59

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$2,550.00 and reimbursement of expenses of \$20.31, pursuant to 11 U.S.C. § 330, on a final basis.

Ervin Cohen & Jessup LLP (“ECJ”), counsel to chapter 7 trustee – approve fees of \$9,521.00 and reimbursement of expenses of \$846.63, pursuant to 11 U.S.C. § 330, on a final basis. ECJ is authorized to collect \$8,886.00 in fees and \$846.63 in expenses. The Court will not approve \$1,375.00 in fees for the reasons below.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Rene A Altevain**

**Chapter 7**

administration of the case." 11 U.S.C. § 330(a)(4)(A).

In accordance with the foregoing, the Court will not approve the following estimated time for appearance at the hearing on the final fee application, because such appearances are waived:

Description	Time	Fee
APPEARANCE AT HEARING ON FINAL FEE APPLICATION	2.5	\$1,375.00

The chapter 7 trustee must submit the order within seven (7) days of the hearing.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Rene A Altevain

Represented By  
Jeffrey N Wishman

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Peter A Davidson



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#1.10** Chapter 7 Trustee's second interim application for compensation and reimbursement of expenses

fr. 10/18/18; 10/25/18

Docket 158

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$5,887.80 and reimbursement of expenses of \$117.25. At this time, the trustee may collect 100% of the approved fees (based on the authorized disbursements to his employed professionals) and 100% of the approved expenses.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#1.20** Application for payment of interim fees and/or expenses (11 U.S.C. § 331) of Foley & Lardner LLP, attorneys for Trustee's Period: 5/2/2018 to 8/31/2018

fr. 10/18/18; 10/25/18

Docket 161

**Tentative Ruling:**

**No later than November 8, 2018**, pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), Foley & Lardner LLP ("Applicant") must file a client declaration regarding its fee application, or a statement regarding steps taken to obtain such declaration if none is forthcoming. Provided that such declaration is timely filed, the Court will approve fees and expenses as follows:

Applicant, general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$6,646.50 and reimbursement of expenses of \$10.70, pursuant to 11 U.S.C. § 331, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court has not awarded \$3,810.00 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Antonio Lamar Dixon**

**Chapter 7**

services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court's refusal to approve fees for the following services performed by the trustee's counsel with respect to the debtors' real property: "negotiating with the debtors' attorney regarding the sale of the equity to the debtors; [and] reviewing the title report." *Garcia*, 335 B.R. at 726.

With respect to its holding, the BAP explained that "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee. Routine negotiations regarding the sale of real property are properly within the trustee's province. . . . Employment of counsel to assist in the sale did not give counsel a free rein to step into the trustee's shoes and undertake efforts statutorily assigned to the trustee." *Id.* at 727.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 1, 2018

Hearing Room 301

10:30 AM

CONT... **Antonio Lamar Dixon**

**Chapter 7**

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Fee/Employment Application	6/11/18	AMMD	\$690.00	1.90	\$1,311.00	Review and revise Trustee’s Application to Employ Foley & Lardner LLP as General Counsel and correspondence to/from Fahim Farivar regarding modifications to be made to same
Fee/Employment Application	6/11/18	FFA	\$595.00	0.60	\$357.00	Review Ms. McDow’s comments to the Application to Employ Foley & Lardner LLP, revise and update the same per Ms. McDow’s comments, and follow up correspondence to Mr. Gottlieb regarding reviewing and executing the same.
Fee/Employment Application	6/11/18	FFA	\$595.00	0.70	\$416.50	Prepare Notice of Trustee’s Application to Employ Foley & Lardner, finalize the underlying Application, and Declaration of Ms. McDow in support and file the same with the Court and confer with Ms. Hernandez regarding service of the same.
Fee/Employment Application	6/13/18	FFA	\$595.00	0.70	\$416.50	Draft Notice of Trustee’s Application to employ Foley & Lardner LLP, finalize the Employment Application and the Notice, file the same with the Court and confer with Ms. Hernandez regarding service of the same

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 1, 2018

Hearing Room 301

10:30 AM

CONT...

**Antonio Lamar Dixon**

**Chapter 7**

Fee/ Employment Application	7/17/18	FFA	\$595.00	0.20	\$119.00	Review docket to make sure there were no opposition filed to the Trustee's Application to Employ Foley & Lardner LLP as General Bankruptcy Counsel, and draft Declaration of Non-Opposition in support of granting the Application.
Fee/ Employment Application	7/18/18	FFA	\$595.00	0.20	\$119.00	Review Ms. McDow's comments to the Declaration of Non-Opposition and the Proposed Order granting the Foley & Lardner Employment Application, revise and finalize the same per Ms. McDow's comments, and confer with Ms. Hernandez regarding filing and serving the same.
Case Administration	7/17/18	FFA	\$595.00	1.60	\$952.00	Draft united status Trustee status report for June 30, 2018 and confer with Ms. Dow regarding the same.
Case Administration	7/18/18	FFA	\$595.00	0.20	\$119.00	Review Ms. McDow's comments to the draft united status Trustee status report, revise and update the same, and correspond to the Trustee regarding the same.

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT...**

**Antonio Lamar Dixon**

Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#1.30** Final application for approval of of compensation and expense reimbursement of Baker & Hostetler LLP, for the period of November 26, 2016 through and including May 2, 2018

fr. 10/18/18; 10/25/18

Docket 159

**Tentative Ruling:**

**No later than November 8, 2018**, pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), Baker & Hostetler LLP ("Applicant") must file a client declaration regarding its fee application, or a statement regarding steps taken to obtain such declaration if none is forthcoming. Provided that such declaration is timely filed, the Court will approve fees and expenses as follows:

Applicant, former general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$46,373.50 and reimbursement of expenses of \$810.25, pursuant to 11 U.S.C. § 330, on a final basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time. Applicant may seek the remaining 20% of the approved fees at the conclusion of the bankruptcy case. The Court has not awarded \$2,386.50 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Antonio Lamar Dixon**

**Chapter 7**

factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court's refusal to approve fees for the following services performed by the trustee's counsel with respect to the debtors' real property: "negotiating with the debtors' attorney regarding the sale of the equity to the debtors; [and] reviewing the title report." *Garcia*, 335 B.R. at 726.

With respect to its holding, the BAP explained that "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee. Routine negotiations regarding the sale of real property are properly within the trustee's province. . . . Employment of counsel to assist in the sale did not give counsel a free rein to step into the trustee's shoes and undertake efforts statutorily assigned to the trustee." *Id.* at 727.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Antonio Lamar Dixon**  
estate.

**Chapter 7**

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Fee-Employment Application	12/6/16	Delany Michael T.	\$405.00	0.10	\$40.50	Correspond with Ms. McDow regarding the revisions to the initial draft of application to employ Focus Advisory Services
Fee-Employment Application	12/6/16	Delany Michael T.	\$405.00	0.50	\$202.50	Finalize initial draft of application to employ Focus Advisory Services
Fee-Employment Application	12/7/16	Delany Michael T.	\$405.00	0.10	\$40.50	Correspond with Mr. Gottlieb regarding the application to employ Focus Advisory as broker for the estate
Fee-Employment Application	12/7/16	Delany Michael T.	\$405.00	0.10	\$40.50	Correspond with Mr. Frier regarding the application to employ Focus Advisory as broker for the estate
Fee-Employment Application	12/7/16	Delany Michael T.	\$405.00	0.30	\$121.50	Continue finalizing application to employ Focus Advisory as broker for the estate
Fee-Employment Application	12/7/16	McDow Ashley M.	\$550.00	0.40	\$220.00	Review and revise Trustee’s application to employ Focus Advisory Services and declaration in support of same and confer with Michael Delaney regarding modifications to be made to same
Fee-Employment Application	12/9/16	Delany Michael T.	\$405.00	0.60	\$243.00	Draft the notice of application to employ Focus Advisory as broker
Fee-Employment Application	12/9/16	Delany Michael T.	\$405.00	0.10	\$40.50	Correspond with Mr. Fier regarding application to employ Focus Advisory as broker

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Antonio Lamar Dixon**

**Chapter 7**

Fee-Employment Application	12/9/16	Delany Michael T.	\$405.00	0.20	\$81.00	Correspond with Mr. Gottlieb regarding application to employ Focus Advisory as broker
Fee-Employment Application	12/16/16	Delany Michael T.	\$405.00	0.60	\$243.00	Finalize application to employ Focus Advisory and associated documents
Fee-Employment Application	1/3/17	Delany Michael T.	\$430.00	0.20	\$86.00	Review docket to determine whether any objections or oppositions to the Focus Advisory Services fee application were timely filed
Fee-Employment Application	1/4/17	Delany Michael T.	\$430.00	0.10	\$43.00	Confer and correspond with Ms. McDow regarding the proposed order granting application to employ Focus Advisory Services as broker
Fee-Employment Application	1/4/17	Delany Michael T.	\$430.00	0.20	\$86.00	Review and revise declaration re non-opposition for application to employ Focus Advisory Services as broker
Fee-Employment Application	1/5/17	Delany Michael T.	\$430.00	0.30	\$129.00	Finalize the declaration re entry of order without hearing and prepare the same for filing
Claims Administration and Objections	2/13/17	Delany Michael T.	\$430.00	0.20	\$86.00	Confer and correspond with Ms. McDow and Mr. Gottlieb regarding the amended proof of claim filed by Franchise Tax Board
Claims Administration and Objections	2/13/17	Delany Michael T.	\$430.00	0.50	\$215.00	Review amended proof of claim filed by Franchise Tax Board and confer with Franchise Tax Board regarding same
Claims Administration and Objections	2/15/17	Delany Michael T.	\$430.00	0.30	\$129.00	Review additional documents provided by FTB regarding secured status of the claim
Claims Administration and Objections	2/8/18	Delany Michael T.	\$485.00	0.20	\$97.00	Confer with IRS regarding the proof of claim and status of unfiled tax returns
Claims Administration and Objections	2/9/18	Delany Michael T.	\$485.00	0.50	\$242.50	Confer with the IRS regarding the status of the Debtor's tax returns and implications of the same for the IRS proof of claim

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

---

10:30 AM

**CONT... Antonio Lamar Dixon**

**Chapter 7**

**Party Information**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**1:13-15687 Antonio Lamar Dixon**

**Chapter 7**

**#1.40** Application for payment of interim fees and expenses of Berkeley Research Group, LLC Accountant period: 11/1/2016 to 8/15/2018

fr. 10/18/18; 10/25/18

Docket 151

**Tentative Ruling:**

Berkeley Research Group, LLC ("BRG"), accountant to chapter 7 trustee – approve fees of \$12,091.00 and reimbursement of expenses of \$13.16, pursuant to 11 U.S.C. § 331, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court has not awarded \$126.00 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Antonio Lamar Dixon**

**Chapter 7**

compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees as noncompensable secretarial work:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Tax Returns - 2016	6/29/17	Evelyn Perry	\$160.00	0.40	\$64.00	Sent assembled tax returns to the trustee for filing
Fee Application and Bill Preparation	11/30/16	Rowen Dizon	\$155.00	0.40	\$62.00	Processed court filing.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by BRG is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and BRG will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Antonio Lamar Dixon**

**Chapter 7**

**Debtor(s):**

Antonio Lamar Dixon

Represented By  
Leslie A Cohen

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael T Delaney  
Ashley M McDow  
Fahim Farivar  
Teresa C Chow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#2.00** Status conference re: chapter 11 case

fr. 4/12/18; 5/10/18; 10/4/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's order extending the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement to October 17, 2018 [doc. 51], the debtor has not timely filed a proposed chapter 11 plan or related disclosure statement. Moreover, contrary to the Court's instructions from the prior status conference, the debtor did not timely file a status report explaining why the debtor has not timely filed a proposed chapter 11 plan or related disclosure statement. In addition, the debtor did not timely file a monthly operating report for September 2018.

Assuming the debtor becomes current with her monthly operating reports, and if the debtor's main barrier to reorganization is the debtor's inability to obtain a loan modification, the Court will provide an opportunity for the debtor to participate in the Loan Modification Management Pilot Program ("LMM"). The LMM forms and procedures may be found on the Court's website at [www.cacb.uscourts.gov/loan-modification-management-pilot-program](http://www.cacb.uscourts.gov/loan-modification-management-pilot-program)

If the debtor chooses to participate, the Court will set a deadline by which the debtor must file a Motion to Commence LMM using Form LMM 4001-1.6.MOTION.COMMENCE and otherwise must comply with the procedures outlined on the Court's website. Alternatively, the debtor must file a chapter 11 plan and disclosure statement. If the debtor does neither, the Court will not provide any further extensions and will dismiss this case.

**Party Information**

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#2.10** Second amended disclosure statement hearing in support  
of second amended plan of reorganization

fr. 6/14/18; 9/13/18; 10/18/18

Docket 95

**\*\*\* VACATED \*\*\* REASON: Order approving disclosure statement  
entered 10/26/18 [doc. 107].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#2.20** Status conference re: chapter 11 case

fr. 10/19/17; 3/15/18; 6/14/18; 9/13/18; 10/18/18

Docket 1

**Tentative Ruling:**

In light of the *Order Approving Individual Debtors' Second Amended Modified Disclosure Statement in Support of Plan of Reorganization* [doc. 107], the Court will continue this status conference to **1:00 p.m. on December 13, 2018**, to be held with the hearing on confirmation of the debtors' proposed chapter 11 plan.

Appearances on November 1, 2018 are excused.

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#2.30** Status conference re: chapter 11 case

fr. 6/21/18; 10/18/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on December 13, 2018**, to be held with the hearing on the adequacy of the debtor's disclosure statement.

Appearances are excused on November 1, 2018.

**Party Information**

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#3.00** First amended motion to avoid judgment lien held by Citibank  
(South Dakota) N.A. under 11 U.S.C. § 522(f) or alternatively § 506(a), (d)

Docket 215

**Tentative Ruling:**

Grant as to 11 U.S.C. § 522(f).

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#4.00** First amended motion for entry of discharge and final decree closing chapter 11 case

Docket 214

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On October 30, 2014, Peter Brook ("Debtor") filed a voluntary chapter 11 petition. On November 14, 2014, Debtor files his schedules and statements [doc. 10]. In his schedule A, Debtor listed real property located at 946 Hyperion Avenue, Los Angeles, California 90029 (the "Property").

On October 5, 2016, Debtor filed a chapter 11 plan (the "Plan") [doc. 143] and related disclosure statement (the "Disclosure Statement") [doc. 144]. In relevant part, the Plan provides:

Discharge. Debtor shall receive a discharge of debts to the extent and at the time provided in § 1141(d), whether or not a party in interest has filed a proof of claim or interest, or accepts this Plan, unless the court orders otherwise.

*The following paragraph only applies to Debtors who are individuals:*  
Pursuant to § 1141(d)(5), Debtor will not be discharged from any debts unless and until (1) Debtor completed all payments "under" the Plan and obtains an order of the court granting a discharge (§ 1141(d)(5) (A)&(C)) – for purposes of this Plan payments that extend beyond the Plan Term stated in Exhibit A are not considered payments "under" the Plan (e.g., if the Plan Term is 5 years then Debtor will be eligible for a discharge under this clause if 5 years of payments are made, but the debtor will remain obligated on obligations that extend beyond the Plan Term, such as a 30-year mortgage); (2) the court grants a limited

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Peter Brook**

**Chapter 11**

("hardship") discharge (§ 1141(d)(5)(B)&(C)); or (3) the court "orders otherwise for cause" (§ 1141(d)(5)(A)&(C)).

Plan, IV.A. Exhibit A of the Plan does not provide a "Plan Term;" rather, Exhibit A includes different plan terms for different claims. Plan, Exhibit A. As to Class 2A, which contains Deutsche Bank's secured claim against the Property, the term is listed as 480 months, i.e., 40 years. As to the remaining classes, the term is listed as 60 months. *Id.* The Disclosure Statement also notes that Exhibit A to the Plan defines the "Plan Term." Disclosure Statement, p. 2. On February 15, 2017, the Court entered an order confirming the Plan [doc. 160].

On October 11, 2018, Debtor filed a motion for entry of discharge and final decree (the "Motion") [doc. 214]. Concurrently, Debtor filed a motion to avoid a lien against the Property (the "Motion to Avoid Lien") [doc. 215]. In the Motion to Avoid Lien, Debtor represents that he is in the process of selling the Property

## **II. ANALYSIS**

Under Federal Rule of Bankruptcy Procedure ("FRBP") 3022, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case."

The Committee Notes to the 1991 amendments to FRBP 3022 help provide an understanding of what is meant by "fully administered:"

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Peter Brook**

**Chapter 11**

have been finally resolved.

The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under § 1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

*See also In re Ground Systems, Inc.*, 213 B.R. 1016, 1019 (B.A.P. 9th Cir. 1997).

Under 11 U.S.C. § 1141(d)(5), in a case in which the debtor is an individual—

- (A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

Here, upon entry of an order on the Motion to Avoid Lien, Debtor's case will be fully administered, and there will be no outstanding matters. As such, Debtor's case is subject to a final decree.

However, as to entry of discharge, despite Debtor's contention that he has made all plan payments, Debtor has not satisfied all of the requirements for discharge under the Plan. In accordance with the Plan, Debtor is deemed to have completed plan payments if Debtor makes all payments with the "Plan Term." The only definitions of "Plan Term" in the Plan are in Exhibit A, where Debtor defined the "term" as 40 years as to Deutsche Bank, and as five years as to the remaining classes. Debtor has not made payments to Deutsche Bank equivalent to the amounts to be paid in either five years or 40 years. As such, whether the term is five years or 40 years, Debtor has not completed the payments to Deutsche Bank.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Peter Brook**

**Chapter 11**

In the Motion to Avoid Lien, Debtor states that he is in the process of selling the Property. If Deutsche Bank's claim is satisfied through that sale, Debtor may properly move for entry of discharge. At this time, the Motion is premature because Debtor has not demonstrated that he has made at least five years worth of payments to Deutsche Bank.

**III. CONCLUSION**

The Court will deny the Motion as to entry of a discharge and grant the Motion as to entry of a final decree.

Debtor must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#5.00** Motion to require Schuller & Schuller to pay attorneys fees and costs  
fr. 10/18/18(stip)

Docket 160

**Tentative Ruling:**

The Court will continue this hearing to November 29, 2018 at 2:00 p.m. Appearances on November 1, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**1:18-11538 Momentum Development LLC**

**Chapter 7**

**#6.00** Motion by DCA Drilling & Construction, Inc. for FRBP 2004 examination of and production of documents by the person most knowledgeable of debtor Momentum Development, LLC

Docket 15

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On June 19, 2018, Momentum Development, LLC ("Debtor") filed a voluntary chapter 7 petition. In its schedule E/F, Debtor listed a claim in favor of DCA Drilling & Construction, Inc. ("DCA") in the amount of \$200,000.

On September 25, 2018, DCA filed a motion to examine Debtor pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 2004 (the "Motion") [doc. 15]. In the Motion, DCA requests a Rule 2004 examination to investigate alleged transfers made by Debtor to another entity. On September 28, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 16], asserting that DCA would not have standing to recover any such transfers on behalf of the estate. On October 25, 2018, DCA filed a reply to the Opposition (the "Reply") [doc. 19]. In the Reply, DCA again states that its purpose for requesting a Rule 2004 examination is to investigate potential transfers from Debtor to another entity. DCA also notes that any such investigation may aid the chapter 7 trustee.

**II. ANALYSIS**

Pursuant to Rule 2004—

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Momentum Development LLC**

**Chapter 7**

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the 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. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

"Rule 2004 is the basic discovery device in bankruptcy cases. It allows broad examination relating to 'the 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 discharge.'" *In re Mastro*, 585 B.R. 587, 596-97 (B.A.P. 9th Cir. 2018) (citing *In re Subpoena Duces Tecum*, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011)). "As the Rule's text makes clear, the scope of a Rule 2004 examination is 'unfettered and broad'; the rule essentially permits a 'fishing expedition.'" *Id.*, at 597 (citing *Subpoena Duces Tecum*, 461 B.R. at 829). However, "Rule 2004 is not without its limits." *Id.*

"When a party seeks to conduct a 2004 examination, and the party to be examined objects, the former must show that it has 'good cause' to conduct the examination." *Subpoena Duces Tecum*, 461 B.R. at 829. "Generally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* (internal quotation omitted). "Once the examiner establishes the existence of 'good cause,' the burden shifts back to the objecting party to show that examination would be oppressive or burdensome." *Id.* "The opportunity for such an examination is available to 'any party in interest,' Fed. R. Bankr.P. Rule 2004(a), but whether or not the court allows the examination is a matter committed to its discretion

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 1, 2018

Hearing Room 301

2:00 PM

CONT... **Momentum Development LLC**

**Chapter 7**

and requires a sufficient cause." *In re J & R Trucking, Inc.*, 431 B.R. 818, 821 (Bankr. N.D. Ind. 2010).

For instance, in *Mastro*, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") found that the chapter 7 trustee could issue a consent directive in connection with a Rule 2004 motion because such a request is tied into the chapter 7 trustee's statutory investigative duties under 11 U.S.C. § 704. *Mastro*, 585 B.R. at 597. The BAP stated:

[W]e stop short of a determination that Rule 2004, in isolation, would justify issuance of a consent directive to anyone other than a chapter 7 trustee. But where, as here, it enables the financial affairs investigation required by the Code, it is firmly tethered to the Trustee's § 704 statutory duties. Thus, issuance of a consent directive in connection with a Rule 2004 examination request is entirely consistent with the broad inquiry into a debtor's financial affairs authorized by the Code.

*Id.* Unlike *Mastro*, here, DCA does not have a statutory duty to investigate transfers from Debtor to third parties, and, even if DCA does uncover any such transfers, does not have the authority to avoid and recover such transfers for the benefit of the estate. That authority lies with the chapter 7 trustee. *See* 11 U.S.C. § 547-550.

*J & R Trucking* is particularly instructive in this case. There, creditors moved to conduct a Rule 2004 examination for three reasons: (A) "to determine whether there are any other trades or businesses which were under common control with the debtor on the date it withdrew from [a] pension fund and, therefore, which might be liable for the debtor's obligations to that fund;" (B) "to determine if [another entity] might be liable, as a successor to the debtor, for the debtor's obligations to" the creditors; and (C) to obtain "information concerning transfers made prior to the petition, which might be recoverable by the trustee." *J & R Trucking*, 431 B.R. at 819-20. In assessing whether creditors could obtain this information through a Rule 2004 examination, the *J & R Trucking* court, like the BAP in *Mastro*, discussed the broad use of Rule 2004 examinations by chapter 7 trustees tasked with investigating debtors:

The broad scope of a 2004 examination arises out of its purpose. Particularly in chapter 7 cases, such as the ones before the court, it is

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 1, 2018

Hearing Room 301

2:00 PM

CONT...

**Momentum Development LLC**

**Chapter 7**

an investigatory device trustees can use in order to quickly gather the information they need to do their job properly. *See, Dinubilo*, 177 B.R. at 940; *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *In re Valley Forge Plaza Associates*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990); *Wilcher*, 56 B.R. at 433-34; *In re Good Hope Refineries, Inc.*, 9 B.R. 421, 423 (Bankr. Mass. 1981). That job, of course, is to investigate the debtor, and the assets of and claims against the bankruptcy estate, turn the assets into cash and distribute those funds to creditors, all as expeditiously as possible. 11 U.S.C. § 704. Ideally, those with knowledge of such things will voluntarily cooperate with the trustee and give the trustee access to the information they have concerning the debtor's affairs. Unfortunately, that is not always the case, and so Rule 2004 provides a vehicle by which the trustee can compel that "cooperation." It allows the trustee to do the necessary investigatory work without the need for initiating formal litigation which would trigger the traditional discovery tools. Indeed, one purpose for such an examination is to give the trustee the information needed to determine whether litigation should be filed.

*Id.*, at 821-22. The *J & R Trucking* court then held that the same reasoning did not apply to creditors:

In assessing the propriety of a request for a 2004 examination, its purpose as an investigatory device arising out of the needs of the trustee should be kept in mind, and where a proposed examination goes beyond that purpose it should be carefully scrutinized. Here, both motions, although couched in the rule's language of matters affecting the administration of the estate and investigating the conduct of the debtor, exceed those boundaries. Remember, these are chapter 7 cases and it is the trustee's the duty to investigate the debtor's affairs and the rights of the bankruptcy estate. To the extent the movants seek to discover avoidable transfers, they are intruding upon the trustee's duties and taking those duties upon themselves. While the court may understand their curiosity, there is nothing the movants could do with that information once they got it. They could not act upon it, or seek to recover any such transfers; the trustee has the exclusive right to do

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 1, 2018

Hearing Room 301

2:00 PM

CONT...

**Momentum Development LLC**

**Chapter 7**

so. *Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) (If a third party tries to prosecute a cause of action belonging to the trustee, the action should be dismissed.). So, in that sense, their examination can serve no real purpose.

*Id.*, at 822. The court concluded that, if the creditors "genuinely want to help the trustee, should the trustee desire that assistance, they must do so directly, acting for, at the behest of, and in the name of the trustee, and not indirectly, in a manner that treats the trustee as simply an incidental beneficiary of an endeavor actually undertaken for someone else." *Id.*; see also *In re E. W. Resort Dev. V, L.P., L.L.L.P.*, 2014 WL 4537500, at \*8 (Bankr. D. Del. Sept. 12, 2014) (denying a creditor's motion for Rule 2004 examination because recovery beyond the moving creditor's allowed claim was impossible and an examination by the moving creditor "would be futile").

Here, as in *J & R Trucking*, DCA seeks to examine Debtor to investigate any transfers made by Debtor to third parties. For the reasons set forth by the *J & R Trucking* court, the chapter 7 trustee is tasked with the investigation, avoidance and recovery of transfers. As such, without the chapter 7 trustee explicitly requesting DCA's assistance, DCA does not have a purpose for the 2004 examination; even if DCA uncovers transfers from Debtor to a third party, DCA cannot use that information to avoid the transfers or recover the transfers for the benefit of the estate.

After Debtor filed an objection to the Motion, the burden shifted to DCA to show "good cause" for the examination. *Subpoena Duces Tecum*, 461 B.R. at 829. In both the Motion and the Reply, DCA's sole articulated purpose for conducting a Rule 2004 examination is to investigate Debtor's relationship with a different entity and any transfers made to that entity. As noted by *Subpoena Duces Tecum*, "[g]enerally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* Here, DCA has not stated that it needs to examine Debtor to establish its claim against the estate, and DCA has not articulated any undue hardship or injustice it may suffer as a result of denial of the Motion. Instead, DCA seeks an examination to investigate alleged transfers from Debtor to another entity, which is a duty assigned by statute to the chapter 7 trustee. Under *J & R Trucking*, a creditor's attempt to assume the chapter 7 trustee's duties through a Rule 2004 examination is inappropriate without the chapter 7 trustee's explicit consent.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 1, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Momentum Development LLC**

**Chapter 7**

Consequently, the Court will deny the Motion.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Momentum Development LLC

Represented By  
Michael H Raichelson

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10877 Shirin Ataie-Tabrizi**

**Chapter 13**

**#2.00 Chapter 13 confirmation hearing**

fr. 9/18/18

Docket 10

**Tentative Ruling:**

Overrule objection to confirmation.

**I. BACKGROUND**

Shirin Ataie-Tabrizi ("Debtor") and her former husband were married on September 23, 1984, and separated on December 15, 2010 [doc. 19]. On November 22, 2011, Debtor and her former husband executed a marital settlement agreement (the "Agreement"). *Id.* On January 23, 2012, the Los Angeles Superior Court entered a judgment for dissolution of marriage on the terms set forth in the Agreement. *Id.* The Agreement divided the couples' community property and community debts. *Id.* The Agreement provides in relevant part,

Each hereby transfer and quitclaims to the other any and all interest in any property in possession of the other, and agrees that whatever property the other may possess is now the sole and separate property of the other.

Agreement, ¶ 6.C.

On March 13, 2013, Habib Bondakdarzadeh ("Creditor") filed a complaint against Debtor and her former husband in the Superior Court of California, County of Los Angeles, alleging fraud, among other things, based on conduct that occurred during Debtor's marriage (the "State Court Action"). *Id.* On May 11, 2017, the state court entered a default judgment in the State Court Action against Debtor and her former husband in the amount of \$325,000.00 (the "Judgment") [doc., Exh. 1].

After the Judgment was entered, Debtor alone filed a motion to vacate the Judgment and to set a new trial date (the "Motion to Vacate") [Declaration of Habib Bonakdarzadeh, ("Bonakdarzadeh Decl."), doc. 25, ¶ 2]. The state court granted the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Shirin Ataie-Tabrizi**

**Chapter 13**

Motion to Vacate, and set the new trial for April 23, 2018. *Id.* The Judgment remains valid against Debtor's former husband.

On April 9, 2018, Debtor filed a voluntary chapter 13 petition. On April 17, 2018, Creditor filed proof of claim no. 1 (the "Claim") for \$425,000.00 based on the Judgment [Claim 1, p. 2]. Creditor attached a supplement to the Claim which computed the Claim as follows: (1) \$325,000.00 per the Judgment against Debtor's former husband; (2) \$32,500.00 based on interest at 10% from April 1, 2017 through April 8, 2018; and (3) \$100,000.00 for attorneys' fees and costs incurred in the State Court Action (estimate).

On April 23, 2018, Debtor filed a chapter 13 plan (the "Plan") [doc. 10]. On June 1, 2018, Creditor filed an objection to confirmation of the Plan (the "Objection") [doc. 18]. On June 1, 2018, Debtor filed a response to the Objection (the "Response") [doc. 19].

On July 25, 2018, Creditor filed a supplemental brief in support of the Objection [doc. 25]. On September 24, 2018, Debtor filed a supplemental Response [doc. 30]. On October 12, 2018, Creditor filed a second supplemental brief in support of the Objection [doc. 31].

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 101(5)(A)—

(5) The term "claim" means--

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured

Pursuant to 11 U.S.C. § 101(12)—

(12) The term "debt" means liability on a claim.

Pursuant to 11 U.S.C. § 109(e)—

Only an individual with regular income that owes, on the date of the filing of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

CONT...

**Shirin Ataie-Tabrizi**

**Chapter 13**

the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under chapter 13 of this title.

Pursuant to 11 U.S.C. § 101(7)—

The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in [section 541\(a\)\(2\)](#) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

Pursuant to 11 U.S.C. § 541(a)(2)—

(a) The commencement of a case under [section 301](#), [302](#), or [303](#) of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

Construing §§ 101(7) and 541(a)(2) together, a community claim, for bankruptcy purposes, is a prepetition claim for which community property of the debtor and the debtor's spouse is liable, whether or not such claim has proceeded to a judgment or otherwise is liquidated on the petition date. *In re Kimmel*, 378 B.R. 630, 635 (B.A.P. 9th Cir. 2007), *aff'd*, 302 F. App'x 518 (9th Cir. 2008). "A consequence of the alignment of §§ 101(7) and 541(a)(2) is that the nonexempt community property existing at the time of the filing of the petition is liable for payment of community

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Shirin Ataie-Tabrizi**  
claims.” *Id.*

**Chapter 13**

Pursuant to Cal. Fam. Code § 910—

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) "During marriage" for purposes of this section does not include the period after the date of separation, as defined in Section 70, and before a judgment of dissolution of marriage or legal separation of the parties.

Pursuant to Cal. Fam. Code § 1000(a)—

A married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist.

Here, Creditor argues that Debtor is ineligible for chapter 13 relief pursuant to 11 U.S.C. § 109(e) because she has more than \$394,725.00 of noncontingent, liquidated, unsecured debts. Creditor contends that the Judgment is a community liability of Debtor and her former husband because the parties were married when the debt arose. Creditor argues that both spouses are equally liable for debts and liabilities of either spouse incurred during marriage. As such, Creditor contends that Debtor is equally liable for the Judgment.

Creditor may be correct that the Judgment is a community debt because the conduct giving rise to the Judgment allegedly occurred while Debtor was married to her former spouse. However, pursuant to Cal. Fam. Code §§ 910 and 1000, only the community estate is liable for community debts. As such, the Judgment cannot be satisfied from Debtor’s separate property.

"Under California law, the event which terminates liability of community property for community debts as well as debts of the other spouse is *division* of the community property, *not dissolution* of the status of the marriage." *In re Miller*, 167 B.R. 202, 208

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Shirin Ataie-Tabrizi**

**Chapter 13**

(Bankr. C.D. Cal. 1994). "The judgment of dissolution of marriage merely restores the parties to the state of unmarried persons." *Id.*; Cal.Fam.Code Section 2300. "The dissolution of status has *no effect* on the liability of community property for community debts." *Miller*, 167 B.R. at 208. "It is *division* of community property which cuts off this liability." *Id.* "Upon division of community property, the community property received by spouse "A" ceases to be liable for a debt incurred by spouse "B" before or during marriage, unless the debt incurred by spouse "B" was assigned to spouse "A" as part of the division of the property." *Id.*; Cal.Fam.Code Section 916(a)(2).

Pursuant to Cal. Fam. Code § 916(a)(2)—

The separate property owned by a married person at the time of the division and the property received by the person in the division is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property. Nothing in this paragraph affects the liability of property for the satisfaction of a lien on the property.

Under Cal. Fam. Code § 916(a)(2), the community's liability for community debts as well as debts of the other spouse terminates at division of property. The separate property owned by a married person at the time of the division and the property received by the person in the division is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property.

Here, on January 23, 2012, the community estate's liability for community debts terminated when the state court entered a judgment for dissolution of marriage because the judgment also divided the community property according to the terms of the Agreement. Under the Agreement, the property received by each spouse was their sole and separate property. The Judgment was entered five years after the community estate's liability for community debts terminated. As such, the "community estate" cannot be liable for the Judgment, as it did not exist. Further, Debtor is not personally liable for the Judgment because she was not assigned payment of the Judgment under the Agreement.

Thus, Creditor does not have a "community claim" as defined under § 101(7). The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Shirin Ataie-Tabrizi**

**Chapter 13**

Judgment is not enforceable against the community estate because the community estate's liability for community debts terminated in 2012. Further, Debtor had no community property at the time of filing the petition that would be liable for the Judgment. *See Kimmel*, 378 B.R. at 635. Creditor also does not have a claim against Debtor for the Judgment because Debtor is not personally liable for the Judgment. Creditor does not have a right to payment of the Judgment from Debtor. As such, Creditor does not hold a claim against the bankruptcy estate as defined in § 101(5)(A).

Because Debtor has no liability for the Judgment and it is not a claim as defined in § 101(5)(A), it is not debt for purposes of § 109(e). As such, Debtor is under the applicable debt limit in § 109(e) to qualify for chapter 13 relief.

Even if the Court found that Creditor has a community claim against Debtor, Debtor would still be under the applicable debt limit in § 109(e) to qualify for chapter 13 relief. Debtor contends that Creditor has deliberately inflated his claim in order to dismiss Debtor's case. Debtor correctly points out there is no indication in the Judgment that Creditor was awarded attorneys' fees. In order for attorneys' fees to be considered liquidated under § 109(e) they must have been awarded as part of the prepetition judgment. *See In re Wenberg*, 94 B.R. 631 (Bankr. 9th Cir. 1988). Once the \$100,000 attorneys' fees are taken out of the Claim, Debtor's total claims are below the debt limits for either secured or unsecured debts. Thus, Debtor is eligible for chapter 13 relief.

### **III. CONCLUSION**

In light of the foregoing, the Court will overrule the Objection.

#### **Ruling from 9/18/18**

Ruling regarding the debtor's evidentiary objections to the identified paragraphs in the Declaration of Habib Bonakdarzadeh set forth below:

paras. 2 and 4: overruled  
Exhibit 1: overruled  
Exhibit 2: sustained

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Shirin Ataie-Tabrizi**

**Chapter 13**

**Debtor(s):**

Shirin Ataie-Tabrizi

Represented By  
Glenn Ward Calsada

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

9:30 AM

1:18-11751 Cindy Karina Monterroso

Chapter 13

#17.00 Chapter 13 confirmation hearing

Docket 0

**Tentative Ruling:**

Overrule objection to confirmation.

**I. BACKGROUND**

On July 12, 2018, Cindy Karina Monterroso ("Debtor") filed a voluntary chapter 13 petition. On July 26, 2018, Debtor filed a chapter 13 plan (the "Plan") [doc. 11]. Also on July 26, 2018, Debtor filed her schedules and statement of financial affairs [doc. 14].

On her Schedule A/B, debtor lists real property located at 14501 Tupper Street, Unit # 28, Panorama City, CA 91402 (the "Property"), with a fair market value of \$0.00. *Id.* In response to "other information you wish to add about this item," Debtor states, "Debtor's mother's residence; Debtor on title for estate planning purposes only – she has not [*sic*] ownership interest." *Id.* Debtor's mother, Irma E. Monterroso ("Irma"), owns the Property free and clear of any liens and mortgages. Declaration of Cindy Karina Monterroso ("Debtor Decl."), doc. 23, ¶ 3; Declaration of Irma E. Monterroso ("Irma Decl."), doc. 23, ¶ 4.

On October 15, 2013, Irma deeded the Property to herself and Debtor as joint tenants. Debtor Decl., ¶ 4; Irma Decl., ¶ 6. Irma states that she transferred the Property as an estate planning tool in order to bequeath the Property to Debtor at Irma's death and to avoid probate. Debtor Decl., ¶ 4; Irma Decl., ¶ 6. Debtor was also concerned about bad actors taking advantage of an elderly widow without English or legal understanding with sole possession of clear title in the Property. Debtor Decl., ¶ 4. Debtor and Irma both state that they both understood that Debtor's role on the title was strictly as a trustee who would ensure that title could not pass without her approval, and as a means of avoiding probate at Irma's passing. Debtor Decl., ¶ 4; Irma Decl., ¶ 6.

Irma purchased the Property and from that time has paid all property taxes, insurance

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cindy Karina Monterroso**

**Chapter 13**

payments and maintenance and upkeep on the Property. Irma Decl., ¶ 5; Debtor Decl., ¶ 5. Debtor has never lived at the Property, never paid any bills or expenses related to the Property and never contributed to the maintenance or upkeep on the Property in any manner. Debtor Decl., ¶ 5a-c. Debtor states that she did not seek to remove herself from title to the property before filing her petition because she did not want to give the appearance that she was attempting to fraudulently transfer the Property out of her name. Debtor Decl., ¶ 7.

On August 21, 2018, the chapter 13 trustee (the "Trustee") filed an objection to confirmation of the Plan (the "Objection") [doc. 19]. In the Objection, the Trustee disputed Debtor's valuation of the Property and requested that Debtor file a brief with the Court if Debtor was claiming that the Property is not Debtor's property. On September 12, 2018, Debtor filed a brief in support of the confirmation of the Plan (the "Response") [doc. 23]. In the Response, Debtor argues that she only holds bare legal title to the Property in a resulting trust in favor of Irma.

On October 23, 2018, the Trustee filed a reply to the Response (the "Reply") [doc. 28]. In the Reply, the Trustee argues that a resulting trust does not exist in this case because transfers between a parent and child are presumed to be a gift and because Debtor has a beneficial interest and an equitable interest in the Property. The Trustee further argues that even if the Court finds that a resulting trust does exist, Debtor still has a legal and equitable interest in the Property according to Ninth Circuit case law.

## **II. DISCUSSION**

Pursuant to 11 U.S.C. § 541(a)(1), property of a debtor's estate includes "all legal or equitable interests of the debtor in property." "However, it does not include 'any power that the debtor may exercise solely for the benefit' of another, 11 U.S.C. § 541(b)(1), nor does it include '[p]roperty in which the debtor holds ... only legal title and not an equitable interest.' 11 U.S.C. § 541(d)." *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994). "Thus, something held in trust by a debtor for another is neither property of the bankruptcy estate under section 541(d), nor property of the debtor for purposes of section 547(b)." *Id.*; *Matter of Torrez*, 63 B.R. 751, 753-54 (B.A.P. 9th Cir. 1986), *aff'd sub nom. In re Torrez*, 827 F.2d 1299 (9th Cir. 1987) ("The United States Supreme Court has stated that Congress has plainly excluded from the estate the property of others held by the debtor in trust at the time of the filing of the petition.") (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cindy Karina Monterroso**  
fn. 10 (1983)).

**Chapter 13**

“Property that a debtor holds subject to a resulting trust never becomes part of that debtor’s bankruptcy estate because the debtor took the property as a trustee and never held more than bare legal title with the full beneficial interest residing in the beneficiary.” *In re Cedar Funding, Inc.*, 408 B.R. 299, 314 (Bankr. N.D. Cal. 2009); *In re Golden Triangle Capital, Inc.*, 171 B.R. 79, 83 (9th Cir.BAP1994). “To determine whether a valid trust exists, [the Court] must look to state law.” *Torrez*, 63 B.R. at 753-54. “In this case California Law governs since California is the situs of the real estate.” *Torrez*, 63 B.R. at 753-54.

“Under California law a resulting trust is implied by operation of law whenever a party pays the purchase price for a parcel of land and places the title to that land in the name of another.” *Torrez*, 63 B.R. at 754; Cal.Civ.Code Section 853. “The trust is presumed to result in favor of the person who paid the purchase price.” *Torrez*, 63 B.R. at 754. “The Statute of Frauds has no applicability to an action for a resulting trust.” *Id.*

Additionally, “a resulting trust arises when a transfer of property takes place under circumstances showing that no one intended for the transferee to take a beneficial interest in the transferred property.” *Cedar Funding, Inc.*, 408 B.R. at 314 “It is enforceable in equity to carry out the inferred intent of the parties to establish a trust.” *Id.* “For example, parties might transfer property with intent to establish a trust relationship, but for some reason the transaction falls short of creating an express trust.” *Id.* “Under those circumstances, courts can use their equitable power to recognize a resulting trust.” *Id.* However, “[i]f title to the land is conveyed to a child of the purchaser, there is a rebuttable presumption that a gift is intended.” *Torrez*, 63 B.R. at 754; *Lloyds Bank California v. Wells Fargo Bank*, 187 Cal.App.3d 1038 (1986).

“Under California law, ‘one who claims a resulting trust in property has the burden of proving the facts establishing his beneficial interest by clear and convincing evidence.’” *In re Cecconi*, 366 B.R. 83, 115 (Bankr. N.D. Cal. 2007), *subsequently aff’d sub nom. Spicer v. Cecconi*, 413 F. App’x 976 (9th Cir. 2011) (quoting *Gomez v. Cecena*, 15 Cal.2d 363, 366–67 (1940)) (citations omitted). “To establish a resulting trust the party claiming it must assert ‘clearly, convincingly and unambiguously the precise amount or proportion of the consideration [paid].’” *In re Chaleunrath*, No.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cindy Karina Monterroso**

**Chapter 13**

ADV. 05-01214, 2006 WL 6810921, at \*5 (B.A.P. 9th Cir. Sept. 5, 2006) (quoting *Lloyds Bank*, 187 Cal.App.3d at 1044). “Parol evidence is admissible to prove the existence of a resulting trust’ and such evidence does not violate the statute of frauds since such a trust is based in part on the fact that there is no writing.” *Cecconi*, 366 B.R. at 115 (quoting *Jones v. Gore*, 141 Cal.App.2d 667, 673, 297 P.2d 474 (1956)).

Debtor argues she holds legal title to the Property in a resulting trust in favor of Irma. To prevail on her claim, Debtor must show by clear and convincing evidence that Irma paid for the Property and that Irma did not intend to give Debtor a beneficial interest in the Property when Debtor’s name was placed on record title. *See Cecconi*, 366 B.R. at 115.

The question is whether by allowing Debtor’s name on the record title to the Property, Irma intended to gift Debtor a beneficial interest in the Property or whether Irma intended to retain the full beneficial interest for herself. *See id.* at 120. Because Irma, the purchaser of the Property, transferred an interest to her child, there is a rebuttable presumption that Irma intended to gift an interest in the Property to Debtor. Debtor can rebut that presumption by presenting sufficient evidence.

Debtor has shown the existence of a resulting trust by clear and convincing evidence. Debtor and Irma both credibly testified in their respective declarations that neither Debtor nor Irma intended for Debtor to hold any beneficial interest in the Property. *See Cecconi*, 366 B.R. at 121. Debtor and Irma both state that they both understood that Debtor’s role on the title was strictly as a trustee who would ensure that title could not pass without her approval, and as a means of avoiding probate at Irma’s passing. Debtor credibly testified that it was her understanding that she has no ownership claim to the Property. *See id.* Debtor has never lived at the Property, never paid any bills or expenses related to the Property and never contributed to the maintenance or upkeep on the Property in any manner. Further, Debtor presented evidence that Irma pays the related expenses and bills associated with the Property, including the homeowner’s insurance on the Property (Exh. B-C), the property taxes on the Property (Exh. D), the utilities on the Property (Exh. E) and the monthly homeowner’s association payments (Exh. F). Finally, Debtor and Irma both credibly testified that the only reason for the transfer was for estate planning purposes.

The Trustee did not present any contradictory evidence. *See Chaleunrath*, 2006 WL 6810921, at \*5. Further, the Trustee did not present evidence that Debtor and Irma’s

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Cindy Karina Monterroso**

**Chapter 13**

conduct changed after the transfer of the Property. *See In re Stewart*, 368 B.R. 445, 454–55 (Bankr. E.D. Pa. 2007). Even though Debtor did not establish the exact amount of consideration Irma paid, that is not relevant when the Court is not faced with an allocation issue. *See id.* As such, Debtor has met her burden of proving by clear and convincing evidence that a resulting trust exists.

Thus, Debtor holds only bare legal title to the Property. Because Debtor holds only bare legal title, the Property is not property of the bankruptcy estate under 11 U.S.C. § 541. The Court will overrule the Objection.

The Trustee argues that there is no resulting trust because Debtor has a beneficial interest in the Property. The Trustee claims because Debtor will receive the Property when Irma passes, that Irma intended Debtor to have a beneficial interest. However, the case law does not support the Trustee’s position. In *Stewart* [FN1] an analogous case to this one, the debtor’s mother transferred ownership of her property to the debtor for estate planning purposes. 368 B.R. at 447. The court found that the debtor held the property in a resulting trust in favor of his mother. 368 B.R. at 454-55. In *Cecconi*, the trustee made a similar argument to the Trustee in this case, and the court rejected the argument. Among other cases, the court cited *Jones v. Kelley*, 121 Cal.App.2d 130 (1953).

In *Jones* a husband and wife intentionally took title in joint tenancy even though the property was purchased with the wife's separate assets. The wife testified that it was the understanding of her and her husband that the property was taken in joint tenancy so that if either spouse predeceased the other, the surviving spouse would hold full ownership of the property. One week before his death, the husband quitclaimed his joint tenancy interest to his daughter from a previous marriage. In an action to quiet title, the wife was awarded a resulting trust on the finding that the joint tenancy was held with the intent and agreement that the property would be held for the survivor of the husband and wife. The *Kelley* court noted that:

The form of an instrument under which a husband and wife hold title is not conclusive as to the status of the property ... When there is an oral or written agreement as to ownership of the property, or where such an understanding may be inferred from the conduct and declarations of the spouses the terms of the deed are not controlling.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

9:30 AM

CONT... **Cindy Karina Monterroso**

**Chapter 13**

*Kelley*, 121 Cal.App.2d at 134. In *Kelley*, the testimony of the wife amply sustained her burden of proving a resulting trust by clear and convincing evidence. *Id.* Similarly, in *Rowland v. Clark*, 91 Cal.App.2d 880 (1949), the court found there was a resulting trust in favor of a grandmother during her lifetime where the grandmother paid the consideration for the property but took title in the name of herself and her granddaughter as joint tenants with intent to retain a life estate.

The Trustee also argues that under Ninth Circuit case law, Debtor has a legal and equitable interest in the Property. The Trustee cites *In re Neuton*, 922 F.2d 1379, 1381-82 (9th Cir. 1990) and *In re Dias*, 37 Bankr. 584, 586-87 (Bankr. D. Idaho 1984), for the proposition that a beneficial interest in a trust is an equitable interest under 11 U.S.C. § 541 despite the fact that at the time of filing it was contingent. However, the cases the Trustee cites are inapposite. In *Neuton*, the debtor held an interest in spendthrift trust as the beneficiary. In *Dias*, the debtor held an interest in her grandparent's inter vivos trust as one of the beneficiaries. Here, Debtor is not the beneficiary of the resulting trust. Debtor holds legal title to the Property as trustee for the benefit of Irma. Further, the case law is clear that property a debtor holds subject to a resulting trust does not become part of the debtor's bankruptcy estate.

### III. CONCLUSION

In light of the foregoing, the Court will overrule the Objection.

### FOOTNOTES

1. Although this is a Pennsylvania case, the burden of proof, the legal standard and the gift presumption are analogous to California law.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cindy Karina Monterroso

Represented By  
Matthew D. Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Cindy Karina Monterroso**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#25.00 Chapter 13 confirmation hearing

Docket 0

**Tentative Ruling:**

In order to evaluate thoroughly the issues raised in the *Objection to Confirmation of Second Amended Chapter 13 Plan* (the "Objection") [doc. 84], filed on October 30, 2018 by Trinity Financial Services LLC, and the debtor's reply to the Objection [doc. 86], filed on November 2, 2018 (as well as the prior briefing filed), if the debtor is current on his senior deed of trust and plan payments, the Court intends to continue this confirmation hearing to December 11, 2018 at 9:30 a.m.

At the plan confirmation hearing to be held on November 6, 2018, the Court will **not** take oral argument on Trinity's objections to confirmation, and the parties are excused from making appearances for that purpose.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Efrem Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#39.00** Motion for order determining value of collateral  
[11 U.S.C. § 506(a), FRBP 3012]

fr. 9/18/18(stip); 10/9/18

Docket 46

**Tentative Ruling:**

In light of the secured creditor's amended opposition [doc. 64], the parties should be prepared to discuss setting an evidentiary hearing.

**Party Information**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Movant(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:12-20778 Randy Gene Noble**

**Chapter 13**

**#40.00** Trustee's Motion to dismiss case

fr. 9/18/18;

Docket 117

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Randy Gene Noble

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

11:00 AM

1:13-16706 Hector Cahuantzi Gutierrez

Chapter 13

#41.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 75

\*\*\* VACATED \*\*\* REASON: Voluntary withdrawal of motion to dismiss  
filed on 10/29/18 [doc. 82].

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hector Cahuantzi Gutierrez

Represented By  
Rabin J Pournazarian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:14-10894 Traci L. Scher and Craig Scher**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 59

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Traci L. Scher

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Craig Scher

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:14-11542 Andrea Nicole Williams-Hart**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 7/10/18; 9/18/18

Docket 135

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Andrea Nicole Williams-Hart

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14567 John Redmond and Kaylyn Redmond**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 10/9/18

Docket 74

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John Redmond

Represented By  
James Geoffrey Beirne

**Joint Debtor(s):**

Kaylyn Redmond

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11981 Polonia Katarina Bright Johnson and Alton Earl Johnson**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 94

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Polonia Katarina Bright Johnson

Represented By  
Sanaz S Bereliani

**Joint Debtor(s):**

Alton Earl Johnson

Represented By  
Sanaz S Bereliani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:15-13756 Gerardo Tamariz**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 10/9/18

Docket 73

**\*\*\* VACATED \*\*\* REASON: Converted to chapter 7 on 10/09/2018**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gerardo Tamariz

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:15-14067 Brian Igbini**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 4/10/18; 6/12/18, 8/7/18; 9/18/18;

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Brian Igbini

Represented By

Anthony Obehi Egbase

Crystle J Lindsey

Edith Walters

W. Sloan Youkstetter

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#48.00** Trustee's motion to dismiss case for failure to make plan  
fr. 9/18/18 ; 10/9/18;

Docket 81

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12565 Hamid Reza Janbakhsh-Mazlaghani**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 38

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hamid Reza Janbakhsh-Mazlaghani

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18; 7/10/18; 8/7/2018; 9/18/18

Docket 51

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 62

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10796 Eloy Medina, Jr.**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18; 10/9/18

Docket 42

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eloy Medina Jr.

Represented By  
Joshua L Sternberg

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11135 Jose Orcia Ramirez**

**Chapter 13**

**#53.00** Trustee's motion to dismiss case for failure to make  
plan payments  
(Evidentiary Hearing)

fr. 8/7/2018; 9/18/18; 10/9/18

Docket 26

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose Orcia Ramirez

Represented By  
Hasmik Jasmine Papian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11860 Juan Morales and Maria Morales**

**Chapter 13**

**#54.00** Trustee's motion to dismiss case for failure to make plan payments

Docket 45

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Morales

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Maria Morales

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12522 Taghreed Yaghnam**

**Chapter 13**

**#55.00** Trustee's motion to dismiss case for failure to make plan payments  
fr. 10/9/18;

Docket 41

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Taghreed Yaghnam

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12930 Jose Cabral Aguilera**

**Chapter 13**

**#56.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 10/9/18

Docket 42

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jose Cabral Aguilera

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:17-13303 Leonarda G Aguilar**

**Chapter 13**

**#57.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 41

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leonarda G Aguilar

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10244 Donald Critchfield and Sharyn Critchfield**

**Chapter 13**

**#58.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18

Docket 49

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Donald Critchfield

Represented By  
Larry D Simons

**Joint Debtor(s):**

Sharyn Critchfield

Represented By  
Larry D Simons

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:00 AM

**1:18-10264 Joe Lopez, Jr.**

**Chapter 13**

**#59.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18; 10/9/18

Docket 29

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Joe Lopez Jr.

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:30 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#60.00** Show cause hearing why debtor's counsel should not be sanctioned for failure to appear at hearing on trustee's motion to dismiss

Docket 84

**Tentative Ruling:**

On August 9, 2018, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the case of Indira LaRoda ("Debtor") for failure to make plan payments ("Motion to Dismiss") [doc. 81]. On August 23, 2018, Debtor filed an opposition to the Motion to Dismiss [doc. 82]. The initial hearing on the Motion to Dismiss was set for September 18, 2018. Response, ¶ 9.

On October 9, 2018, the Court held a continued hearing on the Motion to Dismiss. Debtor's counsel did not appear. On October 9, 2018, the Court issued the OSC [doc. 84], on the grounds that Debtor's counsel failed to appear at the hearing on the Motion to Dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). Debtor's counsel was ordered to explain his failure to appear and file and serve on Debtor a written response to the OSC no later than October 23, 2018.

On October 23, 2018, Debtor's counsel timely filed his response ("Response") [doc. 87]. In his Response, Debtor's counsel stated that he failed to appear at the hearing because he mistakenly thought the hearing was off calendar. Response, ¶ 12.

If Debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on September 18, 2018 at 11:00 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued Motion to Dismiss hearing, the Court may impose sanctions on Debtor's counsel.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:30 AM

**CONT... Indira LaRoda**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

11:30 AM

**1:18-10710 Freddy Moreno and Maria Teresa Moreno**

**Chapter 13**

**#61.00** Show cause hearing why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

Docket 42

**Tentative Ruling:**

On September 19, 2018, the Court issued an *Order to Show Cause Why Debtors' Counsel Should Not be Sanctioned for Failure to Appear at Confirmation Hearing* (the "OSC") [doc. 42], on the grounds that the debtors' counsel failed to appear at the confirmation hearing as required by LBR 3015-1(d). The debtors' counsel was ordered to explain his failure to appear and file and serve on the debtors a written response to the OSC no later than October 23, 2018.

The debtor's counsel timely filed a response. However, contrary to the OSC, the debtors' counsel did not serve his response on the debtors. If the debtors' counsel or an appearance attorney appears at the continued confirmation hearing on November 6, 2018 at 9:30 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued confirmation hearing, the Court may impose sanctions on the debtors' counsel.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freddy Moreno

Represented By  
Phillip Myer

**Joint Debtor(s):**

Maria Teresa Moreno

Represented By  
Phillip Myer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:30 AM

**1:13-10735 Dawn Elana Gonzales**

**Chapter 13**

**#62.00** Motion objecting to the response of JP Morgan Chase to the Chapter 13 Trustee's notice of final cure payment

fr. 9/18/18(stip); 10/9/18

Docket 122

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 11/4/18 - jc**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dawn Elana Gonzales

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12647 Freddy Benjamin Castro**

**Chapter 13**

**#63.00** Motion to vacate order or, in the alternative, for reconsideration of, orders avoiding lien of Deutsche Bank National Trust Company and confirming debtor's chapter 13 plan

fr. 6/12/18; 9/18/18(stip); 10/9/18(stip)

**stip to cont hrg fld 11/2/18**

Docket 52

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered 11/5/18.  
Hearing continued to 12/11/18 at 11:30 AM.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freddy Benjamin Castro

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 6, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11734 Helen Galope**

**Chapter 13**

**#64.00** Trustee's objection to debtor's claim of homestead exemption

Docket 33

**Tentative Ruling:**

Sustain objection and disallow claim of exemption based on California Code of Civil Procedure § 704.730 in the debtor's real property located at Avenue C and 30<sup>th</sup> Street Lancaster, California 93536 ("Property"), as set forth in the debtor's amended Schedule C filed on September 17, 2018 [doc. 25].

The chapter 13 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Helen Galope

Represented By  
Matthew D. Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, November 6, 2018

Hearing Room 301

11:30 AM

1:18-11905 John Joseph Barry

Chapter 13

#65.00 Trustee's objection to debtor's exemption

Docket 20

\*\*\* VACATED \*\*\* REASON: Order entered on 10/26/18 dismissing the case [doc. 27].

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

John Joseph Barry

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:18-12509 Hartland Property Holdings LLC

Chapter 7

#1.00 Motion for relief from stay [UD]

JEWEL CITY DEVELOPMENT  
VS  
DEBTOR

Docket 8

**Tentative Ruling:**

Although the hearing date and time were included, movant failed to provide an opposition deadline in the notice of the motion.

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

Deny request for relief under 11 U.S.C. § 362(d)(4). Section 362(d)(4) appears to be inapplicable. The movant is the owner of the property, not a creditor whose claim is secured by an interest in the property, as specified in the statute.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Hartland Property Holdings LLC**

**Chapter 7**

**Debtor(s):**

Hartland Property Holdings LLC

Represented By  
Lauren Rode

**Movant(s):**

Jewel City Development

Represented By  
Daniel I Singer

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#2.00 Motion for relief from stay [RP]

BOBS LLC  
VS  
DEBTOR

Docket 72

\*\*\* VACATED \*\*\* REASON: voluntary dismissal filed 10/23/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Movant(s):**

Bobs LLC

Represented By  
David I Brownstein

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10107 Justino Hernandez**

**Chapter 7**

**#3.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 109

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Justino Hernandez

Represented By  
Anthony Obehi Egbase  
Crystle Jane Lindsey  
Adaure C Egu  
Edith Walters

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Justino Hernandez**

**Chapter 7**

**Movant(s):**

DEUTSCHE BANK NATIONAL

Represented By  
Sean C Ferry

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

**1:18-12514 Idelle Esther Shapiro-Scott**

**Chapter 13**

**#4.00** Motion for relief from stay [UD]

RAINTREE PLAZA SHERMAN OAKS LLC  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Idelle Esther Shapiro-Scott

Represented By  
Kevin T Simon

**Movant(s):**

RAINTREE PLAZA SHERMAN

Represented By  
Gary D Fidler



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Idelle Esther Shapiro-Scott**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12120 Raymond Smith**

**Chapter 13**

**#5.00 Motion for relief from stay [RP]**

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Raymond Smith**

**Chapter 13**

**Debtor(s):**

Raymond Smith

Pro Se

**Movant(s):**

The Bank of New York Mellon fka

Represented By  
Erin M McCartney

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:14-14009 Michele Amy Schneider

Chapter 13

#6.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB  
VS  
DEBTOR

Docket 55

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Michele Amy Schneider

Represented By  
Joshua L Sternberg

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Raymond Jereza

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Michele Amy Schneider**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:15-10295 Adolph Earl Jones and Katherine Johnson Jones

Chapter 13

#7.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 58

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Adolph Earl Jones

Represented By  
Allan S Williams

**Joint Debtor(s):**

Katherine Johnson Jones

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Adolph Earl Jones and Katherine Johnson Jones**  
Allan S Williams

**Chapter 13**

**Movant(s):**

JPMORGAN CHASE BANK,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:16-11467 Debbie Ann Ko

Chapter 13

#8.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 61

**Tentative Ruling:**

Although the debtor filed a response to the motion, the response is not supported by evidence. On March 1, 2017, the Court entered an order confirming the debtor's chapter 13 plan [doc. 33]. According to the terms of the plan, the debtor surrendered the property to the movant [doc. 33, p. 7]. Further, the debtor is delinquent 28 postpetition payments, for a total postpetition delinquency of \$85,158.46. Accordingly, the Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The Court will not waive the 14-day stay prescribed by FRBP 4001(a)(3).

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Debbie Ann Ko

Represented By  
Kevin T Simon

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Nirvani Singh



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Debbie Ann Ko**

**Chapter 13**

Michael S Kogan  
April Harriott  
Sean C Ferry

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:18-12555 Francisco Javier Miranda

Chapter 13

#8.10 Motion for relief from stay [RP]

SHERWOOD TOWNHOMES ASSOCIATION  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Francisco Javier Miranda

Represented By  
R Grace Rodriguez

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Francisco Javier Miranda**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

9:30 AM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#9.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 88

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The Court will not waive the 14-day stay prescribed by FRBP 4001(a)(3).

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Kelly M Raftery

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

**1:16-10045 Duane Daniel Martin**

**Chapter 7**

Adv#: 1:18-01106 David K. Gottlieb in his capacity as Chapter 7 Tru v. Roxe, LLC, a

- #10.00** Status conference re: complaint to:  
1. Quiet Title Of Real Property Located At 22401 Summitridge  
Circle, Chatsworth, CA 91311; and  
2. Recover Property Of The Estate Nature of Suit

**Stip to continue filed 10/5/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 10/10/18 continuing hearing  
to 12/5/18 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Defendant(s):**

Roxe, LLC, a California limited

Pro Se

Derek Folk, an individual

Pro Se

Michael Martin an individual

Pro Se

Doe 1 through DOE 10, inclusive

Pro Se

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Plaintiff(s):**

David K. Gottlieb in his capacity as

Represented By  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Duane Daniel Martin**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10030 Maria Minicucci Miller**

**Chapter 7**

Adv#: 1:17-01031 Isromorphism Holdings, LLC v. Miller

**#11.00** Pretrial conference re complaint to determine non-dischargeability of debt  
fr. 4/4/18

Docket 1

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 7016-1(e), the plaintiff did not file and serve a declaration regarding the plaintiff's efforts to contact the defendant and the defendant's alleged non-cooperation.

In the plaintiff's unilateral pretrial statement [doc. 40], the plaintiff states that it is ready for trial. However, the plaintiff also states that the plaintiff intends to file a motion to compel the defendant to appear for a deposition and respond to the plaintiff's other discovery requests. Moreover, the plaintiff also states it intends to file a motion in limine to exclude evidence and testimony the defendant did not produce during discovery and a motion to strike the defendant's answer.

Does the plaintiff intend: (1) to move to compel the defendant to produce discovery and/or appear for deposition; or (2) to proceed at this time with a motion to exclude defendant's testimony and evidence and/or to strike defendant's answer?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Minicucci Miller

Represented By  
Alon Darvish

**Defendant(s):**

Maria Minicucci Miller

Represented By  
William J Smyth

**Plaintiff(s):**

Isromorphism Holdings, LLC

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Maria Minicucci Miller**

Talin V Yacoubian

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#12.00** Pretrial conference re complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18; 5/16/18; 6/20/18, 9/12/18

Docket 1

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 7016-1(b)(2)(J), the parties did not include the following language in their joint pretrial stipulation (the "JPS") [doc. 32]: "The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this order supersedes the pleadings and governs the course of trial of this cause, unless modified to prevent manifest injustice." The Court will add this language to its order approving the JPS.

The Court also will strike paragraph 16 of the admitted facts in the JPS. The Court denied the plaintiff's motion for summary judgment based on a number of reasons set forth in the Court's written ruling on that motion [doc. 22], and not simply because the Court "wanted to hear live testimony on intent."

In addition, although the complaint did not include a claim under 11 U.S.C. § 523(a)(6), the parties state in the JPS that § 523(a)(6) is an issue of law to be adjudicated at trial. Does the defendant agree to the inclusion of § 523(a)(6) as a claim to be tried?

Other than the issues noted above, the Court will approve the JPS. The parties should be prepared to address the following:

The Court intends to set this matter for trial at **9:30 a.m. on January 28, 2019.**

TRIAL BRIEFS:

The Court will request pretrial briefs from the parties on the following issues:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Maryam Azizi**

**Chapter 7**

(A) The application of 11 U.S.C. § 523(a)(2)(A) and, if approved, § 523(a)(6), to the facts;

(B) Whether the Court should apply California or Texas law on exemplary damages; and

(C) If the plaintiff is entitled to an award of exemplary damages, whether the Court is bound by the state court's calculation of exemplary damages.

The plaintiff's trial brief must be filed and served **28 days** before trial.

The defendant's trial brief must be filed and served **21 days** before trial.

Any reply brief by the plaintiff must be filed and served **14 days** before trial.

WITNESS TESTIMONY:

Testimony of witnesses must be presented live at trial pursuant to the Federal Rules of Evidence. **Each party will be responsible for securing the timely appearance of his/her/their non-party witnesses.**

**Seven (7) days** before trial, the parties also must file a joint witness schedule setting forth the time and date (e.g., which day and a.m. or p.m.) for the cross-examination of each witness.

The Court will NOT consider the testimony of any witnesses who were not identified on a party's witness list, and will not consider the testimony of any witness which is not relevant to the issues of fact and law for trial.

EXHIBITS:

All trial exhibits must be numbered and marked as required by Local Bankruptcy Rule ("LBR") 9070-1(a). **If deposition testimony is to be offered as part of the evidence, the offering party must comply with LBR 7030-1.**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

CONT... **Maryam Azizi**

**Chapter 7**

The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

**One week prior to trial**, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and two copies of a notebook containing all of that party's trial exhibits, or the parties may deliver a joint exhibit notebook.

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial dates.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01081      Albini et al v. Zuckerman

**#13.00**      Status conference re complaint to determine nondischargeability  
of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18

Docket      1

**Tentative Ruling:**

Has a mediation date been set?

**10/17/2018 Tentative:**

The parties should be prepared to discuss their availability for a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Liebling et al v. Goodrich et al* [1:18-ap-01087-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK].

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Pro Se

**Plaintiff(s):**

Ronald Lapham

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Frederick Mann	Represented By Edward McCutchan
Katherine Mann	Represented By Edward McCutchan
Jim Nord (Mein Trust)	Represented By Edward McCutchan
Evelina Dale Peritore	Represented By Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Gary Ricioli	Represented By Edward McCutchan
Leon Sanders	Represented By Edward McCutchan
Mary Lou Schmidt	Represented By Edward McCutchan
Mark Schulte	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Richard Seversen	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Walter Spirindonoff

Represented By  
Edward McCutchan

Greg Vernon

Represented By  
Edward McCutchan

Carmen Violin

Represented By  
Edward McCutchan

We Care Animal Rescue

Represented By  
Edward McCutchan

Nansi Weil

Represented By  
Edward McCutchan

Lillian Lapham

Represented By  
Edward McCutchan

Edward Keane

Represented By  
Edward McCutchan

Gary Holbrook

Represented By  
Edward McCutchan

Vern Fung

Represented By  
Edward McCutchan

Edward P Albini

Represented By  
Edward McCutchan

Dolores Abel

Represented By  
Edward McCutchan

Carl (Eugene) Barnes

Represented By  
Edward McCutchan

Patricia Barnes

Represented By  
Edward McCutchan

Dale Barnes

Represented By  
Edward McCutchan

Ken Bowerman

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Eileen Boyle	Represented By Edward McCutchan
Henry P Crigler	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Henry Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Erhard York Trustee	Represented By Edward McCutchan
Louise Escher York	Represented By Edward McCutchan
Graham Gettemy	Represented By Edward McCutchan
Robert P Gilman	Represented By Edward McCutchan
John Hightower	Represented By Edward McCutchan
Bill Hing	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

K Owyong Crigler

Represented By  
Edward McCutchan

Jim Nord (Patrick Family Trust)

Represented By  
Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087      Liebling and June Liebling individually and on beh v. Goodrich et al

**#14.00**      Creditor's Motion to strike debtor's notice of removal and/or remand

fr. 9/12/18; 10/3/18; 10/17/18

Docket      8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Jeff Greene	Pro Se
DOES 1 through 100, inclusive	Pro Se
Greene Broad Beach Corporation	Pro Se
Fidelity National Title Insurance	Pro Se
Candyce Lynn Gerrior	Pro Se
Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se
Peter Skarpias aka Peter Scarpias	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Mark Rudiger Represented By  
Edward McCutchan

Elizabeth Ross on behalf of Betty P Represented By  
Edward McCutchan

Cathy Ripple Represented By  
Edward McCutchan

Dennis Ripple Represented By  
Edward McCutchan

Gary Ricioili Represented By  
Edward McCutchan

Justin Poeng Represented By  
Edward McCutchan

Charlie Ray Moore Represented By  
Edward McCutchan

Evelina Peritore Represented By  
Edward McCutchan

Scott Page Represented By  
Edward McCutchan

Nord Kerry L. Nord, individually Represented By  
Edward McCutchan

Carey James Represented By  
Edward McCutchan

Mireille M Moore Represented By  
Edward McCutchan

John Milliken on behalf of We Care Represented By  
Edward McCutchan

Jack Miller and Virginia Miller Represented By  
Edward McCutchan

Dorothy Sanders Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Charlotte Pitois	Represented By Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan
Troy Winslow and Robin Winslow	Represented By Edward McCutchan
Mark D Shulte individually and on	Represented By Edward McCutchan
Henry T Crigler and Kathleen	Represented By Edward McCutchan
Francine Deering	Represented By Edward McCutchan
Gregge Vernon	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Louise Escher York, individually	Represented By Edward McCutchan
Amy Marshall	Represented By Edward McCutchan
Nansi Weil	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Marvin Taylor Represented By  
Edward McCutchan

Jerry Strickler and Linda M. Represented By  
Edward McCutchan

Ryan Strickler Represented By  
Edward McCutchan

Donald Stewart Represented By  
Edward McCutchan

Walter Spiridonoff Represented By  
Edward McCutchan

Sandy Smith and Edward L. Smith Represented By  
Edward McCutchan

Lindy Sinclair Represented By  
Edward McCutchan

Richard Seversen individually and Represented By  
Edward McCutchan

Beverly J. Taylor Represented By  
Edward McCutchan

Patricia L Marshall Represented By  
Edward McCutchan

Steve Harvey Represented By  
Edward McCutchan

Fredric I Mann and Katherine Mann Represented By  
Edward McCutchan

Dale Davis Represented By  
Edward McCutchan

Henry T Crigler on behalf of the Represented By  
Edward McCutchan

James T Deering Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Dennis Cordellos	Represented By Edward McCutchan
John Cleary and Kathleen J. Cleary	Represented By Edward McCutchan
Eileen Boyle individually and on	Represented By Edward McCutchan
Ken Bowerman and Christine	Represented By Edward McCutchan
Gene Barnes	Represented By Edward McCutchan
Dale Barnes and Caroline Barnes	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Carl Barnes	Represented By Edward McCutchan
Randy Bailey	Represented By Edward McCutchan
Jackie Ann Albini	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Dolores Abel individually and on	Represented By Edward McCutchan
Richard Abel	Represented By Edward McCutchan
Hyam Liebling and June Liebling	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Gary Dezorzi and Judith Dezorzi                      Represented By  
Edward McCutchan

Suki Ferl    Represented By  
Edward McCutchan

Jacinda Duval    Represented By  
Edward McCutchan

Graham H Gettemy individually and                      Represented By  
Edward McCutchan

Vito Lovero    Represented By  
Edward McCutchan

Vernon Larson    Represented By  
Edward McCutchan

Ronald P Lapham and Rosemary E.                      Represented By  
Edward McCutchan

Lillian Lapham    Represented By  
Edward McCutchan

Peter Kerston    Represented By  
Edward McCutchan

Glen Lane    Represented By  
Edward McCutchan

Pamela Lane    Represented By  
Edward McCutchan

Edward Keane    Represented By  
Edward McCutchan

Thomas B Marshall    Represented By  
Edward McCutchan

Gary Holbrook    Represented By  
Edward McCutchan

Bill Ong Hing and Lenora Verne                      Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Edward McCutchan

John Hightower and Polly Ann

Represented By  
Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01087 Lieblich and June Lieblich individually and on beh v. Goodrich et al

**#15.00** Status Conference and Order to Show cause re remand

fr. 10/3/18; 10/17/18

Docket 1

**Tentative Ruling:**

Has a mediation date been set?

**10/17/2018 Tentative:**

The parties should be prepared to discuss their availability for a global mediation with the parties involved in the other adversary proceedings against the defendant/debtor, which appear to arise out of the same operative facts, namely, *Albini et al v. Zuckerman* [1:18-ap-01081-VK] and *Abel v. Zuckerman et al* [1:18-ap-01086-VK].

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Jeff Greene

Pro Se

DOES 1 through 100, inclusive

Pro Se

Greene Broad Beach Corporation

Pro Se

Fidelity National Title Insurance

Pro Se

Candyce Lynn Gerrior

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

Anthony Phillip Piazza	Pro Se
Daystar Real Estate Services	Pro Se
Tyna Degenhardt	Pro Se
Joycelyn Orbase	Pro Se
Peter Skarpas aka Peter Scarpas	Pro Se
Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se
Kjell Nelson	Pro Se
John W Cruikshank	Pro Se
Raphael Rosingana	Pro Se
Charlene Goodrich	Pro Se
Jeanne Triacca	Pro Se
Malibu Greene View Corporation	Pro Se
Greene Malibu 3 Corporation	Pro Se
Triple J's Corporation	Pro Se
Greene Malibu Ranch Corporation	Pro Se
Canyon Greene Corporation	Pro Se
Malibu Beach View Corporation	Pro Se
Stephen Reeder	Pro Se
Charles R Reeder	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Greene Lower Broad Beach	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

**Plaintiff(s):**

Leon Sanders	Represented By Edward McCutchan
Alan Ricioili	Represented By Edward McCutchan
Mark Rudiger	Represented By Edward McCutchan
Elizabeth Ross on behalf of Betty P	Represented By Edward McCutchan
Cathy Ripple	Represented By Edward McCutchan
Dennis Ripple	Represented By Edward McCutchan
Gary Ricioili	Represented By Edward McCutchan
Justin Poeng	Represented By Edward McCutchan
Charlie Ray Moore	Represented By Edward McCutchan
Evelina Peritore	Represented By Edward McCutchan
Scott Page	Represented By Edward McCutchan
Nord Kerry L. Nord, individually	Represented By Edward McCutchan
Carey James	Represented By Edward McCutchan
Mireille M Moore	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

John Milliken on behalf of We Care      Represented By  
Edward McCutchan

Jack Miller and Virginia Miller      Represented By  
Edward McCutchan

Dorothy Sanders      Represented By  
Edward McCutchan

Charlotte Pitois      Represented By  
Edward McCutchan

Mary Lou Schmidt individually and      Represented By  
Edward McCutchan

Troy Winslow and Robin Winslow      Represented By  
Edward McCutchan

Mark D Shulte individually and on      Represented By  
Edward McCutchan

Henry T Crigler and Kathleen      Represented By  
Edward McCutchan

Francine Deering      Represented By  
Edward McCutchan

Gregge Vernon      Represented By  
Edward McCutchan

Matthew Zdanek      Represented By  
Edward McCutchan

Louise Escher York, individually      Represented By  
Edward McCutchan

Amy Marshall      Represented By  
Edward McCutchan

Nansi Weil      Represented By  
Edward McCutchan

Carmen Violin      Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Charles Sebranek	Represented By Edward McCutchan
Steve Townsend and Kelly Marie	Represented By Edward McCutchan
Marvin Taylor	Represented By Edward McCutchan
Jerry Strickler and Linda M.	Represented By Edward McCutchan
Ryan Strickler	Represented By Edward McCutchan
Donald Stewart	Represented By Edward McCutchan
Walter Spiridonoff	Represented By Edward McCutchan
Sandy Smith and Edward L. Smith	Represented By Edward McCutchan
Lindy Sinclair	Represented By Edward McCutchan
Richard Seversen individually and	Represented By Edward McCutchan
Beverly J. Taylor	Represented By Edward McCutchan
Patricia L Marshall	Represented By Edward McCutchan
Steve Harvey	Represented By Edward McCutchan
Fredric I Mann and Katherine Mann	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Dale Davis Represented By  
Edward McCutchan

Henry T Crigler on behalf of the Represented By  
Edward McCutchan

James T Deering Represented By  
Edward McCutchan

Dennis Cordellos Represented By  
Edward McCutchan

John Cleary and Kathleen J. Cleary Represented By  
Edward McCutchan

Eileen Boyle individually and on Represented By  
Edward McCutchan

Ken Bowerman and Christine Represented By  
Edward McCutchan

Gene Barnes Represented By  
Edward McCutchan

Dale Barnes and Caroline Barnes Represented By  
Edward McCutchan

Patricia Barnes Represented By  
Edward McCutchan

Carl Barnes Represented By  
Edward McCutchan

Randy Bailey Represented By  
Edward McCutchan

Jackie Ann Albini Represented By  
Edward McCutchan

Edward P Albini Represented By  
Edward McCutchan

Dolores Abel individually and on Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

	Edward McCutchan
Richard Abel	Represented By Edward McCutchan
Hyam Liebling and June Liebling	Represented By Edward McCutchan
Gary Dezorzi and Judith Dezorzi	Represented By Edward McCutchan
Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By Edward McCutchan
Graham H Gettamy individually and	Represented By Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Vernon Larson	Represented By Edward McCutchan
Ronald P Lapham and Rosemary E.	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Peter Kerston	Represented By Edward McCutchan
Glen Lane	Represented By Edward McCutchan
Pamela Lane	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman**

**Chapter 11**

Thomas B Marshall

Represented By  
Edward McCutchan

Gary Holbrook

Represented By  
Edward McCutchan

Bill Ong Hing and Lenora Verne

Represented By  
Edward McCutchan

John Hightower and Polly Ann

Represented By  
Edward McCutchan

Kerry L Nord individually and on

Represented By  
Edward McCutchan

Michael Gubernik

Represented By  
Edward McCutchan

Kathryn Gregory

Represented By  
Edward McCutchan

Craig Gregory individually and on

Represented By  
Edward McCutchan

Wendy Gilman

Represented By  
Edward McCutchan

Robert Gilman

Represented By  
Edward McCutchan

Gordon Hogland individually and

Represented By  
Edward McCutchan

Edward L Smith on behalf of Equity

Represented By  
Edward McCutchan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01103      Hancock v. Anderson

**#16.00**      Status conference re: complaint to object to discharge of debt [11 USC sections 523(a)(2)(A), 523(a)(4), 523(a)(6) and 523(a)(19)(A)(ii) ]

Docket      1

**Tentative Ruling:**

The plaintiff did not timely serve the summons on the defendant. In his proof of service, the plaintiff indicates that he served the defendant with the summons and complaint on September 25, 2018. However, the summons expired on September 18, 2018.

The plaintiff must request another summons from the Court. The plaintiff can obtain another summons from the Court by sending a request letter to Courtroom Services, Attn: Patty Garcia, 21041 Burbank Blvd., Woodland Hills, CA 91367.

The summons must be served upon the defendant within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004(e) and Local Bankr. R. 7004-1(b). The plaintiff must attach the summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the summons and the complaint and instructions to be served with that summons, the plaintiff must file a signed proof of service indicating that the summons and the documents to be served with that summons were timely served on the defendant. October 3, 2018 at 1:30 p.m

If the plaintiff can obtain another summons from the Court by November 28, 2018, the status conference will be continued to **February 6, 2018 at 1:30 p.m.**

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Christopher Anderson**

**Chapter 7**

**Defendant(s):**

Christopher Anderson

Pro Se

**Plaintiff(s):**

Jerry Hancock

Represented By  
James A Judge

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:18-01105 QUEEN et al v. Anderson

#17.00 Status conference re: complaint 1) objecting to discharge [11 USC sections 727(a)(2)(A), (a)(3), (a)(4), (a)(5) and (a)(6)]; 2) to determine non-dischargeability of debt [11 USC sections 523(a)(2)(A) and (a)(6)]

Docket 1

**Tentative Ruling:**

The Court intends to issue an Order to Show Cause why the defendant's answer should not be stricken for failure to meet and confer with the plaintiff and to participate in the filing of a joint status report.

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Defendant(s):**

Christopher Anderson

Pro Se

**Plaintiff(s):**

WAYNE QUEEN

Represented By  
Michael Goch

TONY WAYNE BLASSINGAME

Represented By  
Michael Goch

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#18.00 Motion for discovery orders re: interrogatories

Docket 617

**Tentative Ruling:**

**I. BACKGROUND**

***A. Debtor's Bankruptcy Case and Claim of Exemption***

On February 7, 2011, Kevan Harry Gilman ("Debtor") filed a voluntary chapter 7 petition. On February 21, 2011, Debtor filed his schedule C, in which he claimed an exemption in the real property located at 6553 Varna Avenue, Van Nuys, California 91401 (the "Property") in the amount of \$137,000 [doc. 12].

On June 24, 2011, Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Creditors") filed an objection to Debtor's claim of a homestead exemption [doc. 27]. On June 25, 2011, Creditors filed an amended objection to Debtor's claim of a homestead exemption [doc. 30]. On August 11, 2011, after Debtor failed to respond, the Court entered an order sustaining Creditors' objection to Debtor's homestead exemption [doc. 37].

On August 4, 2011, Debtor filed an amended schedule C, claiming a homestead exemption in the amount of \$104,000 [doc. 35]. On July 17, 2012, Creditors filed a renewed motion objecting to Debtor's claim of a homestead exemption (the "Objection") [doc. 73]. In the Objection, Creditors argued that: (A) On August 7, 2012, the Court held a hearing on the Objection. At that time, the Court issued a ruling overruling the Objection, except as to Debtor's claim of an enhanced homestead exemption [doc. 84]. On September 5, 2012, the Court held a status conference on the Objection and set a discovery cutoff date of December 31, 2012.

***B. Creditors' Extensive Discovery***

Subsequently, Creditors filed several discovery motions in connection with the Objection as well as a different objection to Debtor's claim of an exemption in alleged

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... **Kevan Harry Gilman**

Chapter 7

retirement accounts. Specifically, on July 27, 2013, Creditors filed a motion for terminating sanctions based on Debtor's alleged failure to comply with a prior order to compel discovery (the "Motion for Terminating Sanctions") [doc. 154]. In their reply to Debtor's opposition to the Motion for Terminating Sanctions, Creditors filed exhibits containing over 200 pages of documents which Debtor had produced in response to Creditors' discovery requests [docs. 175, 176]. As such, the Court denied the Motion for Terminating Sanctions [doc. 186].

On October 11, 2013, Creditors filed additional discovery motions, including: (A) a motion to compel responses to a deposition question asking Debtor to identify the banks in which Debtor currently has accounts [doc. 187]; (B) a motion renewing Creditors' request for terminating sanctions [doc. 189]; and (C) another motion renewing Creditors' request for terminating sanctions [doc. 192]. On December 4, 2013, Creditors filed additional discovery motions, including a motion to compel further responses to interrogatories [doc. 205] and a motion to compel further responses for document production [doc. 206]. On December 11, 2013, Creditors filed a motion to deem certain responses to requests for admission insufficient and requested sanctions against Debtor [doc. 208].

On December 26, 2013, the Court issued the *Order to Show Cause Why the Court Should Not (1) Limit Discovery Pursuant to Federal Rule of Civil Procedure 26(b)(2)(C) and/or (2) Deny Creditors' Motion to Compel Deposition Response, Two Terminating Sanctions Motions, Motion to Compel Interrogatory Responses, Motion to Compel Document Production, and Motion to Compel RFA Responses* (the "Discovery OSC") [doc. 211]. In the Discovery OSC, the Court, relying on Federal Rule of Civil Procedure ("Rule") 26(b)(2)(C) and case authority, asked Creditors to show cause why further discovery was warranted. The Court noted that "there is evidence that the outstanding discovery sought from Debtor is unreasonably cumulative or duplicative" and that "Creditors have bombarded Debtor with excessive, overlapping discovery methods and numerous discovery motions." Discovery OSC, p. 5. The Court found:

Regarding Creditors' opportunity to obtain the information by discovery, Creditors have had well over one year to conduct discovery regarding the Objection. While there have been delays in discovery production (for which the Court has extended the discovery cutoffs),

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Kevan Harry Gilman**

**Chapter 7**

Creditors now appear to have received ample discovery to prosecute the Objection.

...

Lastly, the burden or expense of the proposed discovery outweighs its likely benefits, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving these issues.

Discovery OSC, pp. 5-6.

Although the Court adjudicated Debtor's entitlement to a general homestead exemption on August 7, 2012, and much of the discovery related to Debtor's entitlement to a disability enhancement to his homestead exemption and to Debtor's claim of an exemption in alleged retirement accounts, Creditors' discovery requests included broad requests for, among other things, Debtor's banking information. In addition, concurrently with the litigation surrounding Debtor's claims of exemption, Creditors filed a complaint against Debtor requesting nondischargeability of the debt owed to Creditors and objecting to Debtor's discharge (the "Adversary Proceeding") [1:11-ap-01389-VK]. In connection with their numerous claims in the Adversary Proceeding, including allegations regarding Debtor's concealment or transfer of property of the estate, Creditors conducted extensive discovery. Although the Court initially set a discovery cutoff date of December 15, 2011, the Court thrice granted Creditors' request to continue the discovery cutoff date [Adversary Proceeding, docs. 60, 90, 132], eventually extending the discovery cutoff date to November 18, 2012. After the expiration of the discovery deadline, Creditors moved to file a supplemental complaint against Debtor [Adversary Proceeding, doc. 270], which the Court granted [Adversary Proceeding, doc. 286]. On February 18, 2015, Creditors moved to amend their supplemental complaint [Adversary Proceeding, doc. 393], which the Court again granted [Adversary Proceeding, doc. 420]. Creditors' amended supplemental complaint included allegations that Debtor did not disclose that the Property was in escrow as of the petition date [Adversary Proceeding, doc. 415].

In light of Creditors' supplemental and amended supplemental complaints, the Court set a new discovery cutoff date of June 1, 2015 [Adversary Proceeding, doc. 384].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

---

2:30 PM

CONT... **Kevan Harry Gilman**

Chapter 7

Eventually, the Court entered a judgment denying Debtor his discharge based on Debtor's postpetition transfers of funds from accounts belonging to the estate [Adversary Proceeding, doc. 671].

***C. The Court's Ruling on Debtor's Exemptions and Subsequent Appeals***

On January 6, 2015, the Court entered an order overruling the Objection, except as to Creditors' objection to Debtor's claim of a disability enhancement to Debtor's homestead exemption (the "Homestead Exemption Order") [doc. 315]. The Court subsequently held an evidentiary hearing regarding Debtor's claim of a disability enhancement, after which time the Court sustained Creditors' objection to Debtor's claim of a disability enhancement. On January 20, 2015, Creditors filed a motion for new trial and/or a motion to vacate the Homestead Exemption Order (the "Motion for New Trial") [doc. 321]. On March 18, 2015, the Court held a hearing on the Motion for New Trial. On April 10, 2015, the Court entered an order denying the Motion for New Trial [doc. 368].

On April 1, 2015, Creditors appealed the Homestead Exemption Order [doc. 361]. On February 22, 2016, the district court affirmed the Homestead Exemption Order [doc. 495]. On August 22, 2016, Creditors appealed the district court's ruling to the Ninth Circuit Court of Appeals [doc. 496]. On April 13, 2018, the Ninth Circuit Court of Appeals issued its opinion (the "Opinion"). *In re Gilman*, 887 F.3d 956 (9th Cir. 2018). In the Opinion, the Court of Appeals stated that the only issues remaining for adjudication on remand are: (A) whether Debtor intended to reside at the Property; and (B) whether California equitable law could be used to deny Debtor's claim of a homestead exemption (the "Issues on Remand"). *Id.*, at 966.

***D. Post-Remand History***

On June 27, 2018, the parties appeared for a status conference after remand. In a ruling after that status conference (the "Discovery Ruling") [doc. 600], the Court reiterated that the Court would only entertain the Issues on Remand. The Court explicitly stated:

In light of the Court of Appeals' decision, the only issues remaining for adjudication on remand are: (A) whether the debtor intended to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

reside at the subject property; and (B) whether any California equitable law could be used to deny the debtor's exemption. As a result, the Court will entertain arguments only about these narrow issues. Any attempt by a party to relitigate issues that have already been decided by the Court of Appeals may subject that party to sanctions in accordance with Federal Rule of Bankruptcy Procedure 9011.

Discovery Ruling, p. 1.

As a courtesy to the parties, and despite the years of extensive discovery preceding the remand, the Court allowed the parties to propound additional discovery, but limited such discovery to the narrow Issues on Remand. The Court set a discovery cutoff date of September 14, 2018. Subsequently, the Court twice continued the discovery cutoff date [docs. 612, 613], landing on a final discovery cutoff date of September 28, 2018.

***E. The Discovery Motion***

On July 16, 2018, Creditors served a first set of interrogatories, consisting of a single interrogatory, on Debtor ("First Interrogatory"). Declaration of Charles Jakob ("Jakob Declaration") [doc. 621], ¶ 2. Concurrently with the First Interrogatory, Creditors served requests for admission ("RFAs") and requests for production of documents (the "RFPs"). *Id.* On August 3, 2018, Creditors served a second set of interrogatories, consisting of four interrogatories, on Debtor (the "Second Interrogatories"). Jakob Declaration, ¶ 3.

On August 17, 2018, Debtor mailed responses to the First Interrogatory and to the RFAs. Declaration of Mark Ellis ("Interrogatory Ellis Declaration") [doc. 620], ¶ 2; Declaration of Rosanne Estrella [doc. 620], ¶¶ 2-3, Exhibits 1-2. Debtor mailed his responses to 7144 Fair Oaks Boulevard, Suite 3A, Carmichael, California 95608 (the "Carmichael Address"). *Id.* Creditors list the Carmichael Address as their business address on their filings and sign off their emails with the Carmichael Address. *See, e.g.* Jakob Declaration, ¶¶ 6, 9, Exhibits 3, 6.

On August 22, 2018, Creditors' counsel emailed Debtor's counsel, stating that Creditors had not received Debtor's responses to Creditors' first set of discovery requests. Jakob Declaration, ¶ 4, Exhibit 1. On August 24, 2018, Debtor's counsel



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

emailed Creditors' counsel, asserting that Debtor timely served Creditors at the Carmichael Address. Jakob Declaration, ¶ 7, Exhibit 4. Nevertheless, Debtor attached his responses to the First Interrogatory and the RFAs to the August 24, 2018 email. *Id.*

On August 28, 2018, Debtor served his responses to the Second Interrogatories as well as to the RFAs from Creditors' first set of discovery requests. Interrogatory Ellis Declaration, ¶ 4; Declaration of Jennifer E. Mueller ("Mueller Declaration") [doc. 620], ¶¶ 2-4, Exhibits 3-5. Debtor mailed his responses to the Carmichael Address. *Id.* Debtor acknowledges that his responses to the RFAs were not timely, stating that one of Debtor's attorneys fell ill around the time the responses to the RFAs came due. Interrogatory Ellis Declaration, ¶ 5. Because his responses were untimely, Debtor served his responses to the RFAs without objection. *Id.*

On September 5, 2018, Debtor served Creditors with an amended response to the First Interrogatory, clarifying an error from Debtor's first response. Interrogatory Ellis Declaration, ¶ 7; Mueller Declaration, ¶ 5, Exhibit 6. Debtor served Creditors at the Carmichael Address. *Id.* On September 21, 2018, Debtor served Creditors with an amended response to the RFAs at the Carmichael Address. Interrogatory Ellis Declaration, ¶ 6; Mueller Declaration, ¶ 8.

On September 28, 2018, Creditors filed the *Motion for Discovery Orders re: Interrogatories* (the "Discovery Motion") [doc. 617]. Creditors request further responses to the First Interrogatory and the Second Interrogatories and request sanctions based on responses which Creditors contend were untimely. On October 3, 2018, Debtor filed a response to the Discovery Motion [doc. 620]. On October 25, 2018, Creditors filed an objection to Debtor's response [doc. 630].

***F. The Objection to Subpoenas***

On August 17, 2018, Creditors served subpoenas on JPMorgan Chase Bank, Wells Fargo Bank and Bank of America (collectively, the "Subpoenas"). Declaration of Mark E. Ellis ("Subpoena Ellis Declaration") [doc. 604], ¶¶ 3-5, Exhibits 2-4. In attachments to the Subpoenas, Creditors requested all documents related to Debtor's accounts with those banks, as well as all documents related to loans, Certificates of Deposit, retirement accounts, customer correspondence, checks, wire transfers, teller tapes and credit cards for the period between May 3, 2015 and August 17, 2018. *Id.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Kevan Harry Gilman**

**Chapter 7**

Creditors also requested all of the documents specified above related to accounts in the name of Kwei-Shiang Gilman, Debtor's ex-wife, for the period between the petition date and August 17, 2018. *Id.*

On August 30, 2018, 13 days after Creditors' service of the Subpoenas and prior to the deadline for the banks to respond, Debtor served objections to the Subpoenas on the recipient banks and on Creditors. Subpoena Ellis Declaration, ¶¶ 6-9, Exhibits 5-9. Debtor's letter to Creditors also included a request for Creditors to withdraw the Subpoenas. Subpoena Ellis Declaration, ¶ 9, Exhibit 8. On September 2, 2018, Creditors responded to Debtor's letter and refused to withdraw the Subpoenas. Subpoena Ellis Declaration, ¶ 10, Exhibit 9.

On September 11, 2018, Debtor filed a motion to quash the Subpoenas, or, in the alternative, for a protective order pursuant to Rule 26(c) (the "Objection to Subpoenas") [doc. 604]. On September 12, 2018, Creditors filed a motion to strike the Objection to Subpoenas (the "Motion to Strike") [doc. 608], asserting that the Objection to Subpoenas was filed in the wrong court. On October 25, 2018, Creditors filed an opposition to the Objection to Subpoenas (the "Opposition") [doc. 629]. In the Opposition, Creditors assert that: (A) Debtor does not have standing to move to quash the Subpoenas; (B) the Objection to Subpoenas was filed in the wrong Court; (C) the Objection to Subpoenas is untimely; and (D) Debtor is not entitled to a protective order.

## **II. ANALYSIS**

### ***A. Compliance with Local Rule of Bankruptcy Procedure 7026-1(c)***

Pursuant to Local Bankruptcy Rule ("LBR") 7026-1(c)(1):

Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.

LBR 7026-1(c)(2) requires the following:

Prior to the filing of any motion relating to discovery, counsel for the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

parties must meet in person or by telephone in a good faith effort to resolve a recovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with the counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.

In light of the parties' history and inability to resolve discovery disputes without input from the Court, the Court will not require compliance with LBR 7026-1.

***B. The Objection to Subpoenas***

***i. Standing***

Creditors first assert that Debtor does not have standing to move to quash the Subpoenas. Pursuant to Rule 45(d)(3)—

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

There appears to be no binding authority from the Ninth Circuit Court of Appeals or the Supreme Court of the United States regarding whether a party has standing to move to quash a subpoena issued to a non-party. *See Terteryan v. Nissan Motor Acceptance Corp.*, 2017 WL 3576844, at \*2 (C.D. Cal. July 5, 2017) ("The Ninth Circuit has yet to address the question of whether a party has standing to bring a motion to quash.").

Courts within the Ninth Circuit have taken different approaches to the issue of standing. Most courts appear to take the view that "a party lacks standing under [Rule] 45(c)(3) to challenge a subpoena issued to a nonparty unless the party claims a personal right or privilege with respect to the documents requested in the subpoena," but "has standing under Rule 26(c) to seek a protective order regarding subpoenas issued to non-parties *which seek irrelevant information.*" *In re REMEC, Inc. Sec. Litig.*, 2008 WL 2282647, at \*1 (S.D. Cal. May 30, 2008) (emphasis added); *see also Eric v. Van Cleave*, 2017 WL 553276, at \*6 (W.D. Wash. Feb. 10, 2017); *Clair v. Schlachter*, 2016 WL 2984107, at \*5 (E.D. Cal. May 23, 2016); *and F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 552-53 (D. Nev. 2013) (holding that a party may bring a motion for protective order under Rule 26(c) to quash non-party subpoenas).

Another court held that, although subpoenas were issued to nonparties, there was good cause to allow the defendant to move to quash nonparty subpoenas because the subpoenas included requests that was irrelevant and overbroad. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636-38 (C.D. Cal. 2005). Another court found that the standing conferred on a party by operation of Rule 26(c) serves to furnish standing on a party moving to quash a subpoena under Rule 45. *Firetrace USA, LLC v. Jesciard*, 2008 WL 5146691, at \*1-2 (D. Ariz. Dec. 8, 2008). Finally, at least one court held that, even if a party does not have standing to object to a nonparty subpoena, courts may *sua sponte* assess the relevance of the information sought via the nonparty subpoenas. *Rodriguez v. El Toro Med. Inv'rs Ltd. P'ship*, 2017 WL 2495171, at \*2 (C.D. Cal. May 11, 2017).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... Kevan Harry Gilman

Chapter 7

Courts outside the Ninth Circuit also have taken different approaches to the issue of standing in this context. For instance, one court found that, although parties have limited standing under Rule 45, courts may assess a motion to quash under Rule 45 as a motion for a protective order under Rule 26(c), under which Rule parties do have standing. *Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426, 429 (M.D. Fla. 2005) ("As parties, Defendants clearly have standing to move for a protective order if the subpoenas seek irrelevant information."); *see also Washington v. Thurgood Marshall Acad.*, 230 F.R.D. 18, 22 (D.D.C. 2005) (construing motion to quash under Rule 45 as motion for protective order under Rule 26). Other courts have found that parties may object to subpoenas issued to a party's bank based on the party's "personal right" in their financial records. *See, e.g. In re Capuccio*, 558 B.R. 930, 933 (Bankr. W.D. Okla. 2016).

Because the Ninth Circuit Court of Appeals has held that "there is no privilege between a bank and a depositor," *Reiserer v. United States*, 479 F.3d 1160, 1165 (9th Cir. 2007), it is unclear if the Ninth Circuit Court of Appeals would find that Debtor has any personal right in his bank records that would give him standing to move to quash the Subpoenas under Rule 45(d). However, given that numerous decisions within and outside this circuit provide that parties have standing to object to subpoenas pursuant to Rule 26(c), the Court need not reach the question of standing under Rule 45(d). As aptly stated by one court:

Although the relief obtained by Seagate in its motion for a protective order is similar to the relief that could have been obtained by the individuals and entities named in the subpoenas had they brought motions to quash under Rule 45, courts have recognized an important distinction between requests to quash a subpoena and motions for protective orders requesting the court to control discovery more generally under Rules 16 and 26. The mere fact that subpoenas are the type of discovery at issue does not limit parties and the court to the relief provided for in Rule 45. ...Where a party, such as Seagate, contends that subpoena requests are irrelevant, cumulative, and burdensome, they are not simply asserting the rights of the third party, but their own right to reasonable discovery and efficient disposition of the case. *See Fed.R.Civ.P. 1.* ("These rules ... should be construed and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

administered to secure the just, speedy, and inexpensive determination of every action and proceeding."). Furthermore, unlike undue burden, which is a fact potentially best known to the party receiving the subpoena, Seagate, as a party to the present litigation, is the only entity as between itself and third parties with the appropriate knowledge to assert an objection based on relevance or cumulative discovery. Therefore, where a party does not seek to quash a subpoena under Rule 45(c) "the issue is not one of privity between a party and the subpoenaed third-person, but is one of case management under Rules 16 and 26." *Marvin Lumber*, 177 F.R.D. at 444. Because the Court finds that Seagate is entitled, as a party to the litigation, to limit irrelevant and cumulative discovery, the Court concludes that the Magistrate Judge did not err in finding that Seagate had standing to bring its motion for a protective order.

*Shukh v. Seagate Tech., LLC*, 295 F.R.D. 228, 236–37 (D. Minn. 2013).

Here, Debtor has moved for a protective order under Rule 26(c), and based on the authorities above, Debtor has standing to object to the Subpoenas under Rule 26, including on the basis that the Subpoenas are irrelevant. Rule 26(c)(1) ("A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending....") (emphasis added). Because Debtor, as a party, is the "only entity... with the appropriate knowledge to assert an objection based on relevance" and to request that the "court... control discovery... under Rules 16 and 26," *Shukh*, 295 F.R.D. at 236-37, this standing extends to Debtor's objections to the Subpoenas that request Ms. Gilman's banking records as well as Debtor's own banking records.

***ii. Debtor Properly Filed the Objection to Subpoenas Before this Court***

Creditors also assert that Debtor should have filed the Objection to Subpoenas in the Eastern District of California. Even if the Debtor's request to quash the Subpoenas should have been filed elsewhere, Debtor's request for a protective order is properly filed before this Court. Pursuant to Rule 26(c)(1), "[a] party... may move for a protective order *in the court where the action is pending....*" (emphasis added). The Objection which gave rise to the Subpoenas is pending before this Court, and this

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

---

2:30 PM

CONT... **Kevan Harry Gilman**

Chapter 7

Court is the only court that can entertain Debtor's request for a protective order under Rule 26(c). Because the Motion to Strike is based on Creditors' argument that Debtor improperly filed the Objection to Subpoenas before this Court, the Court will deny the Motion to Strike.

*iii. The Request for a Protective Order is Timely*

Creditors argue that Debtor's objection to the Subpoenas is untimely. Once again, even if the request to quash the Subpoenas is untimely under Rule 45, the request for a protective order is timely under Rule 26(c). Rule 26(c) does not prescribe a deadline by which a party must file a motion for protective order. Most of the cases cited by Creditors do not discuss Rule 26(c). The only binding authority cited by Creditors is *Burlington Northern & Sante Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 n.3 (9th Cir. 2005). There, in a footnote, the Ninth Circuit Court of Appeals mentioned that "at the outset of discovery or, at the latest, before Rule 34's 30-day time limit has expired, [parties] may either secure an appropriate agreement or stipulation from the relevant litigants or, failing that, apply for a discovery or protective order." *Burlington Northern*, 408 F.3d at 1149 n.3. To the extent the Court of Appeals intended to set a 30-day deadline to file a motion for protective order, Debtor's Objection to Subpoenas is timely. Creditors served their subpoenas on August 17, 2018 and Debtor filed the Objection to Subpoenas on September 11, 2018, within the 30-day period.

Creditors insist that the language from *Burlington* imposes a requirement to file a motion for protective order prior to the time set for responding to a subpoena. In other words, Creditors argue that Debtor should have filed a Rule 26(c) motion prior to Creditors' arbitrary 24-day deadline set forth in the Subpoenas. However, in *Burlington*, the Court of Appeals did not discuss subpoenas at all; the Court of Appeals instead suggested that Rule 34's 30-day deadline may govern motions for protective orders. The Court of Appeals did *not* hold that parties are bound by random deadlines set by an opposing party.

The Court also is not persuaded by the out-of-circuit authority cited by Creditors. In *In re Coordinated Pretrial Proceedings in Petroleum Prod. Antitrust Litig.*, 669 F.2d 620 (10th Cir. 1982), the Tenth Circuit Court of Appeals briefly mentioned in a footnote that "a motion under [Rule] 26(c) for protection from a subpoena is timely

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

filed if made before the date set for production." *Petroleum Products*, 669 F.2d at 622 n.2. As authority for this proposition, the court cited *United States v. IBM Corp.*, 70 F.R.D. 700, 701 (S.D.N.Y. 1976). In *IBM Corp.*, a district court from the Southern District of New York stated that "motions under Rule 26(c) must be served before the date set for production." *IBM Corp.*, 70 F.R.D. at 701. The *IBM Corp.* court based its comment on a 1970 edition of a treatise. 8 *C. Wright & A. Miller, Federal Practice and Procedure* § 2032 (1970). The current edition of the same treatise states that:

Prior to 1970 the protective order rule required that an application for an order be made "seasonably." This requirement was not included when the protective order provisions were moved to Rule 26(c), but the courts still consider the timeliness of a motion and look to all of the circumstances in determining whether the motion is timely. *At least with regard to depositions*, the order should ordinarily be obtained before the date set for the discovery, and failure to move at that time has been held to preclude objection later, but such stringency should not be applied if there was no opportunity to move for a protective order.

8 *C. Wright & A. Miller, Federal Practice and Procedure* § 2032 (2018) (emphasis added). As such, the treatise currently discusses timeliness with respect to depositions, but not as to other requests for discovery, such as the requests for production at issue here.

In any event, courts within this circuit have not imposed any such requirement. *See, e.g. Solis v. Tomco Auto Products, Inc.*, 2012 WL 12878752, at \*4 (C.D. Cal. Sep. 20, 2012) (finding that Rule 26(c) "does not contain a deadline," "[t]he cases do not explicitly require a party to file a motion for protective order before the deadline for serving a written response to discovery" and noting that the court "is not inclined to adopt a requirement that is not found in the Federal Rules of Civil Procedure or local rules, and that would routinely require the filing of ex parte applications"). Courts in other circuit also have declined to read a strict timing requirement into the language of Rule 26(c). For example, in *Dorsett v. Cty. of Nassau*, 800 F.Supp.2d 453, 460 (E.D.N.Y. 2011), *aff'd* 730 F.3d 156 (2d Cir. 2013), the court noted that some courts have held that parties waive their right to file a motion for protective order after documents have already been produced. *Dorsett*, 800 F.Supp.3d at 460. Nevertheless,



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

---

2:30 PM

CONT...

**Kevan Harry Gilman**

**Chapter 7**

the court did not find any authority that required that outcome, and elected to resolve the timeliness dispute "based on the core definition of waiver, which is 'an intentional relinquishment or abandonment of a known right or privilege.'" *Id.*, at 460-61 (quoting *Doe v. Marsh*, 105 F.3d 106, 111 (2d Cir. 1997)).

The Court declines to follow the out-of-circuit authority referenced by Creditors. To the extent the doctrine of waiver is applicable to a Rule 26(c) motion, Debtor did not waive his right to file a motion for protective order. Within 13 days of service of the Subpoenas and prior to the date set for production, Debtor faxed letters to each bank objecting to the Subpoenas. Within 13 days and prior to the date set for production, Debtor also emailed his objection to the Subpoenas to Creditors. Although Debtor did not file the Objection to Subpoenas with the Court prior to the deadline created by Creditors, in light of the fact that Debtor quickly sent objections to the Subpoenas to Creditors and the banks, Debtor did not waive his right to move for a protective order, and the Court will not impose a deadline that is neither found in Rule 26(c) nor mandated by binding authority.

***iv. Relevance***

Having disposed of Creditors' procedural arguments, the Court may address the merits of Debtor's request for a protective order under Rule 26(c). Pursuant to Rule 26(b)(1)—

*Unless otherwise limited by court order*, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(emphasis added). "Relevant information for purposes of discovery is information reasonably calculated to lead to the discovery of admissible evidence." *Survivor*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... **Kevan Harry Gilman**

**Chapter 7**

*Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005) (internal quotation omitted). "District courts have broad discretion in determining relevancy for discovery purposes." *Id.*

Here, the Subpoenas do not request documents that are reasonably calculated to lead to the discovery of admissible evidence on the narrow Issues on Remand. Regarding the Subpoenas related to Debtor's bank accounts, the Subpoenas request documents for the period between May 3, 2015 and August 17, 2018. Given that the Issues on Remand are whether Debtor intended to reside at the Property *as of the petition date* and whether California equitable law may bar Debtor from claiming a homestead exemption *as of the petition date*, no reasonable calculation leads to the conclusion that Debtor's banking records between May 2015 and August 2018 will lead to relevant, admissible evidence regarding the Issues on Remand. Similarly, Creditors have not articulated how any information from Ms. Gilman's separate banking records will lead to admissible evidence relevant to the Issues on Remand.

From their filings, Creditors appear to set forth two arguments. First, Creditors assert that, if records show that Debtor took postpetition rent from property of the estate, any amounts withdrawn by Debtor will be offset against Debtor's homestead exemption. Creditors ignore the binding decision in *Law v. Siegel*, 571 U.S. 415, 134 S.Ct. 1188, 188 L.Ed.2d 146 (2014), wherein the Supreme Court of the United States explicitly held that the bankruptcy court could not hold Debtor's exempt property liable for Debtor's misconduct during his bankruptcy case.

Creditors argue that California law on the doctrine of equitable estoppel allows for such an offset against Debtor's homestead exemption. Although *Siegel* left room for application of state law to bar Debtor's claims of exemption under state law, Creditors have not articulated how the doctrine of equitable estoppel could possibly be applied to bar Debtor's claim of a homestead exemption based on any alleged postpetition withdrawals of funds by Debtor. Under California law, a party requesting application of equitable estoppel must show: "(a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it." *Behnke v. State Farm Gen. Ins. Co.*, 196 Cal.App.4th 1443, 1462 (Ct. App. 2011). What representation or concealment *related to his claim of a homestead exemption* did Debtor make that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... **Kevan Harry Gilman**

**Chapter 7**

induced Creditors to act? How would Debtor's banking records, dated years after the petition date, or Ms. Gilman's separate banking records, lead to admissible evidence regarding Debtor's representations or omissions *related to his claim of a general homestead exemption on the petition date*? How were Creditors "induced to act" based on any such representations or omissions? To the extent Debtor made omissions about postpetition rental funds, why would such an omission give rise to *any* equitable action involving the separate and unrelated matter of Debtor's homestead exemption claim?

Creditors' alternative argument seems to be that the banking records may reveal postpetition transfers of property of the estate which may trigger additional action against Debtor. To the extent Debtor took possession of rental funds belonging to the estate, Creditors' avenue of relief would be to move for denial of Debtor's discharge. The Court already has denied Debtor his discharge. Because this is a chapter 7 case, Creditors do not have standing to recover any postpetition transfers on behalf of the estate. That standing lies with the chapter 7 trustee. *See* 11 U.S.C. §§ 544-550. Given that the banking records requested by Creditors cannot lead to admissible evidence regarding Debtor's claim of a homestead exemption and Creditors do not have standing to recover any such transfers on behalf of the estate, the banking records are not within the scope of discovery under Rule 26(b)(1).

Even if the information requested by the Subpoenas could be deemed relevant under Rule 26(b)(1), the Court explicitly informed the parties that the Court will only entertain the narrow Issues on Remand. Because Rule 26(b)(1) defers to limits on discovery set by the trial court, the Court also finds that the Court's Discovery Ruling served to further limit the type of discovery the parties could pursue on remand. As noted above, Creditors have conducted extensive discovery spanning years in connection with this bankruptcy case and the Adversary Proceeding. The Court previously granted multiple requests by Creditors to continue the discovery cutoff date; for instance, after the Court allowed Creditors to supplement their complaint in the Adversary Proceeding to include allegations regarding the Property being in escrow and additional allegations regarding postpetition transfers by Debtor, the Court set a new discovery cutoff date to allow Creditors to obtain additional discovery. The discovery cutoff dates in this case and the Adversary Proceeding expired long before the remand of this matter. Neither the Court of Appeals nor the district court mandated that the Court reopen discovery for either party. Rather, as a courtesy to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... **Kevan Harry Gilman**

**Chapter 7**

parties, the Court allowed a brief discovery period for Creditors to obtain any missing information related to the narrow Issues on Remand, *e.g.*, to take Debtor's deposition regarding his intent to reside at the Property, as of the petition date. Creditors' discovery requests have exceeded the scope of discovery both under Rule 26(b)(1) and under the Court's instructions to the parties. The information in the Subpoenas being outside the scope of discovery under Rule 26(b)(1) and this Court's Discovery Ruling, the Court will enter a protective order barring the banks from responding to the Subpoenas.

***C. The Discovery Motion***

Through the Discovery Motion, Creditors assert that Debtor's responses to the First Set were untimely and that Debtor must provide further responses to the Second Interrogatories. As to whether Debtor's responses were timely, Debtor acknowledges that his responses to the RFPs were untimely, but it appears those documents were produced to Creditors prior to Creditors' filing of the Discovery Motion. With respect to Debtor's responses to the First Interrogatory and the RFAs, Creditors' assertion that Debtor did not timely respond is disingenuous. Prior to Creditors' filing of the Motion, Debtor attached his responses to the First Interrogatory and the RFAs to an email to Creditors' counsel. The proof of service attached to those responses indicated that Debtor had timely served his responses on Creditors at the Carmichael Address. Given that Creditors' pleadings are captioned with the Carmichael Address and Creditors' counsel signed off on the parties' discovery communications with the Carmichael Address, Debtor's mailing of his responses to that address was reasonable.

In any event, by August 24, 2018, Debtor had emailed his responses to First Interrogatory and the RFAs, and it is unclear what further relief Creditors request as to these responses. To the extent Creditors request sanctions based on untimely responses, the record demonstrates that Debtor timely responded to the First Interrogatory and the RFAs, and there is no basis for sanctions as to these responses. As to the RFPs, because Debtor sent the documents to Creditors without objection prior to Creditors' filing of the Motion, the Motion was unnecessary as a tool to compel production. As such, sanctions also are not warranted as to the RFPs.

Creditors also assert that Debtor's responses to the First Interrogatory and the Second

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

2:30 PM

CONT... **Kevan Harry Gilman**

**Chapter 7**

Interrogatories are insufficient. As discussed below, the Court disagrees.

*i. Second Interrogatories Nos. 2 and 3*

Through these interrogatories, Creditors request that Debtor "[i]dentify (by year, month, and amount...) all payments [Debtor] received after [the petition date] as rent for the use or occupancy of [the Property]" as well as "of the property located at 9010 Corbin Avenue, Suite 16, Northridge, California." Debtor objected to these interrogatories as being outside the scope of discovery on remand. Through these interrogatories, Creditors attempt to obtain some of the same information they are requesting from the banks through the Subpoenas. For the reasons set forth above, these requests are outside the scope of discovery under Rule 26(b)(1) and beyond the scope of discovery allowed by the Court on remand.

*ii. First Interrogatory and Second Interrogatories Nos. 4 and 5*

Through these interrogatories, Creditors ask Debtor to state facts that support his claim that he intended to reside at the Property as of the petition date and that he is entitled to claim a homestead exemption despite the Property being in escrow on the petition date. Debtor responded to these interrogatories by stating that he intended to reside at the Property before, during and after the petition date, and has continuously resided at the Property since 2003 (Debtor later amended the responses to state he has continuously resided at the Property since 1997). It is unclear what further responses Creditors request; Creditors asked Debtor to provide the basis for his claim of a homestead exemption, and Debtor responded accordingly. Debtor need not supplement his responses to these interrogatories.

**III. CONCLUSION**

The Court will grant Debtor's request for a protective order as to the Subpoenas. Because the Court is granting the Objection to Subpoenas, the Court will deny the Motion to Strike. The Court will deny the Discovery Motion and any request for sanctions contained therein.

Debtor must submit proposed orders within seven (7) days.

Tentative ruling regarding Creditors' evidentiary objections to the identified

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

paragraphs in the Subpoena Ellis Declaration set forth below:

paras. 3-8, exs. 2-7: overruled; Debtor has standing for the reasons set forth above

para. 9-12 and exs. 10-11: overrule

paras. 13-14, exs. 12-13: sustain

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Movant(s):**

Courtesy NEF

Represented By  
Charles Q Jakob

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**1:11-11603 Kevan Harry Gilman**

**Chapter 7**

**#19.00** Motion to quash subpoenas; alternatively,  
motion for protective order

Docket 604

**Tentative Ruling:**

See calendar no. 18.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Movant(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 7, 2018

Hearing Room 301

---

2:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#20.00 Status conference re: remand

from: 6/13/18; 6/17/18; 10/10/18

Docket 577

**Tentative Ruling:**

The Court intends to set an evidentiary hearing on this matter at **9:30 a.m. on January 30, 2019.**

The parties must file and serve their witness and exhibit lists no later than **December 5, 2018.** The witness and exhibit lists must conform to Local Bankruptcy Rule ("LBR") 7016-1(b)(2)(D) and (b)(2)(E). The Court will hold a pretrial conference at **1:30 p.m. on December 19, 2018,** to assess whether the parties timely filed their witness and exhibits lists.

WITNESS TESTIMONY:

Testimony of witnesses must be presented live at trial pursuant to the Federal Rules of Evidence. **Each party will be responsible for securing the timely appearance of his/her/their non-party witnesses.**

**Seven (7) days** before trial, the parties also must file a joint witness schedule setting forth the time and date (e.g., which day and a.m. or p.m.) for the testimony and cross-examination of each witness.

The Court will NOT consider the testimony of any witnesses who were not identified on a party's witness list, and will not consider the testimony of any witness which is not relevant to the issues of fact and law for trial.

EXHIBITS:

All trial exhibits must be numbered and marked as required by LBR 9070-1(a). **If deposition testimony is to be offered as part of the evidence, the offering party**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Kevan Harry Gilman  
must comply with LBR 7030-1.**

**Chapter 7**

The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

**One week prior to trial**, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and two copies of a notebook containing all of that party's trial exhibits, or the parties may deliver a joint exhibit notebook.

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial dates.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 7, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

Adv#: 1:18-01078 United States Trustee for the Central District of v. Franckert Mendoza

**#21.00** Motion for default judgment under Local Bankruptcy Rule 7055-1

Docket 12

**Tentative Ruling:**

Grant motion for default judgment pursuant to 11 U.S.C. §§ 727(a)(3) and (a)(5).

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

No court appearance required.

**Party Information**

**Debtor(s):**

Francois E. Franckaert Mendoza

Represented By  
Elena Steers

**Defendant(s):**

Francois Franckert Mendoza

Pro Se

**Movant(s):**

United States Trustee for the Central

Represented By  
Russell Clementson

**Plaintiff(s):**

United States Trustee for the Central

Represented By  
Russell Clementson

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

1:00 PM

**1:14-12922 Robert Lee Alderman and Noni Elizabeth Alderman**

**Chapter 11**

**#1.00** Post confirmation status conference re chapter 11 case

fr. 8/4/16; 11/3/16; 1/19/17; 3/16/17; 7/13/17; 11/9/17; 5/10/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order for final decree and closing case  
entered 9/25/18 [Dkt.434]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Robert Lee Alderman

Represented By  
George J Paukert

**Joint Debtor(s):**

Noni Elizabeth Alderman

Represented By  
George J Paukert

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

1:00 PM

**1:17-10830 ColorFX, Inc.**

**Chapter 11**

**#2.00** Status conference re chapter 11 case

fr. 5/25/17; 9/7/17; 10/19/17; 12/21/17; 2/8/18; 3/29/18; 6/7/18; 10/18/18

Docket 1

**Tentative Ruling:**

On October 31, 2018, the Post-Confirmation Committee timely filed a status report [doc. 225]. However, the status report is not supported by a declaration.

**10/18/18 Tentative**

Contrary to the entered *Order Confirming Liquidating Plan of ColorFX, Inc. Presented by The Official Committee of Unsecured Creditors* [doc. 199], the Post-Confirmation Committee did not timely filed a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization, and the belatedly filed *Post Confirmation Status Conference Report* (the "Post-Confirmation Status Report") [doc. 223] is not supported by evidence.

Local Bankruptcy Rule ("LBR") 3020-1(b) provides that a postconfirmation status report must include:

- (1) A schedule listing for each debt and each class of claims: the total amount required to be paid under the plan; the amount required to be paid as of the date of the report; the amount actually paid as of the date of the report; and the deficiency, if any, in required payments;
- (2) A schedule of any and all postconfirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon;
- (3) Projections as to the reorganized debtor's, postconfirmation trustee's, or other responsible party's continuing ability to comply with the terms of the plan;
- (4) An estimate of the date for plan consummation and application for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**ColorFX, Inc.**  
final decree; and

**Chapter 11**

(5) Any other pertinent information needed to explain the progress toward completion of the confirmed plan.

In the Post-Confirmation Status Report, the Post-Confirmation Committee did not include a schedule of plan payments pursuant to LBR 3020-1(b)(1), projections as to the continuing ability to comply with terms of the plan pursuant to LBR 3020-1(b)(3) and estimated dates for plan consummation and application for final decree pursuant to LBR 3020-1(b)(4).

**Party Information**

**Debtor(s):**

ColorFX, Inc.

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12354 MidiCi Group, LLC**

**Chapter 11**

**#3.00** Application of Debtor and Debtor-In-Possession to employ Greenberg & Bass LLP as bankruptcy counsel; authorizing post-petition, and monthly drawdowns, or in the alternative post-petition retainer

Docket 6

**Tentative Ruling:**

Given the debtor's projected negative net operating income, the Court has concerns about the debtor's ability either: (1) to pay Greenberg & Bass LLP ("G&B") 80% of each monthly invoice, apparently for an indefinite period of time, without obtaining specific Court approval prior thereto, or (2) to fund an additional \$65,000 retainer to G&B. If sufficient funds are available, the Court is more inclined to approve the funding of the postpetition retainer.

Counsel should be prepared to discuss the debtor's ability to do so, and the timing.

**Party Information**

**Debtor(s):**

MidiCi Group, LLC

Represented By  
Douglas M Neistat  
Yi S Kim

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 8, 2018

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#4.00 Status conference re chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **January 11, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 24, 2019.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. *The status report must be supported by evidence in the form of declarations and supporting documents.*

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

**Party Information**

**Debtor(s):**

MidiCi Group, LLC

Represented By  
Douglas M Neistat  
Yi S Kim

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 8, 2018

Hearing Room 301

2:00 PM

1:09-20792 Mehdy Gharachehdaghy and Mahnaz Aalam

Chapter 7

#5.00 Debtors' motion to avoid lien under 11 U.S.C. sec. 522(f)  
real property

fr. 9/20/18

Docket 78

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

**9/20/2018 Ruling:**

**I. BACKGROUND**

On August 20, 2009, Mehdy Gharachehdaghy and Mahnaz Aalam ("Debtors") filed a voluntary chapter 7 petition. In their schedule A [doc. 13], Debtors claimed an interest in real property located at 18747 Wells Drive, Tarzana, California (the "Property") and valued the Property at \$1,700,000. Debtors did not claim an exemption in the Property in their schedule C. In their schedule D, Debtors listed two encumbrances against the Property: (A) a first priority deed of trust in favor of EMC Mortgage ("EMC") in the amount of \$1,600,000; and (B) a second priority deed of trust in favor of GMAC Mortgage ("GMAC") in the amount of \$246,397.

Debtors did not include the Law Offices of Moghadami & Sadig (the "Law Offices") in their schedules and did not provide notice of the bankruptcy case to the Law Offices. On December 3, 2009, the chapter 7 trustee filed the *Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Notice of Assets") [doc. 28]



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam Chapter 7**

and set a claims bar date of March 8, 2010. The chapter 7 trustee did not provide notice of the claims bar date to the Law Offices.

On February 8, 2010, Debtors received their discharge [doc. 36]. On December 9, 2011, Debtors' bankruptcy case was closed. On June 4, 2018, Debtors filed a motion to reopen their bankruptcy case (the "Motion to Reopen") [doc. 74]. On June 26, 2018, the Court entered an order granting the Motion to Reopen [doc. 76].

On July 25, 2018, Debtors filed a motion to avoid the Law Offices' lien under 11 U.S.C. § 522(f) (the "Motion") [doc. 78]. On August 8, 2018, the Law Offices filed an opposition to the Motion (the "Opposition") [doc. 79], asserting that Debtors did not provide enough evidence of the amounts owed to EMC and GMAC as of the petition date and that the debt owed to the Law Offices is nondischargeable, such that the Law Offices would be able to record another abstract of judgment even if Debtors avoid their lien. On August 23, 2018, the Court entered an order setting the Motion for hearing (the "Hearing Order") [doc. 80]. In the Hearing Order, the Court instructed Debtors to file and serve written notice of the hearing on the Law Offices no later than September 6, 2018. The Court also instructed Debtors to file and serve any response to the Opposition by September 13, 2018.

On August 30, 2018, Debtors timely filed a notice of the hearing [doc. 83]. On September 13, 2018, Debtors filed an amended schedule C [doc. 84], claiming a \$1.00 exemption in the Property. On the same day, Debtors filed a reply to the Opposition [doc. 85], attaching an appraisal valuing the Property, as of the petition date, at \$1,600,000.

## **II. ANALYSIS**

First, Debtors do not include evidence of the amount owed to EMC or GMAC as of the petition date. The Court will cannot properly assess the equity in the Property until Debtors provide evidence of the loan balances as of the petition date. The Court will continue this hearing for Debtors to supplement the Motion with this information.

If Debtors provide the required evidence, the Court notes that Debtors may avoid a lien that is based on a nondischargeable debt. Debtors apparently did not provide notice to the Law Offices of Debtors' bankruptcy case. Pursuant to 11 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

523(a)(3), a discharge does not discharge an individual debtor from any debt—

- (3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
  - (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
  - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request....

Here, Debtors acknowledge that they did not provide notice of their bankruptcy case to the Law Offices. Based on the record before the Court, it appears the Law Offices did not receive notice of the bankruptcy prior to March 8, 2010, the claims bar date. The record also does not demonstrate that the Law Offices had actual knowledge of Debtors' bankruptcy filing.

Assuming the debt owed to the Law Offices is nondischargeable, despite the Law Offices' contention, the Court still may avoid the lien. *See In re Farr*, 278 B.R. 171 (B.A.P. 9th Cir. 2002) (citing *Walters v. U.S. Nat'l Bank in Johnstown*, 879 F.2d 95 (3d Cir. 1989) (finding that "*Walters* is consistent with most case law holding that liens resulting from nondischargeable debts are avoidable under § 522(f) if they impair the debtor's exemption."); and *In re Hunnicutt*, 457 B.R. 464-65 (Bankr. D.S.C. 2011) ("Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt.") (collecting cases).

To the extent Debtors have claimed a valid exemption (the deadline to object to Debtors' exemption has not yet expired), even the Law Offices' presumably nondischargeable debt may be avoided if it impairs Debtors' exemption. The Law Offices next assert that, even if their lien is avoided, because the debt owed to the Law

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam Chapter 7**

Offices is nondischargeable, the Law Offices will be able to obtain another lien against the Property. However, neither party discusses the application of 11 U.S.C. § 522(c). Pursuant to 11 U.S.C. § 522(c)—

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

- (1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);
- (2) a debt secured by a lien that is—
  - (A)
    - (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
    - (ii) not void under section 506(d) of this title; or
  - (B) a tax lien, notice of which is properly filed;
- (3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or
- (4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

Two cases include facts relevant to this case. In *Farr*, the debtor filed a chapter 7

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 8, 2018

Hearing Room 301

2:00 PM

CONT... **Mehdy Gharachehdaghy and Mahnaz Aalam**

Chapter 7

petition and claimed an exemption in his residence. *Farr*, 278 B.R. at 173. Subsequently, a creditor obtained a nondischargeability judgment against the debtor under 11 U.S.C. § 523(a)(2)(A). *Id.* After the debtor received his discharge, the creditor recorded an abstract of judgment, creating a lien against the debtor's residence. *Id.*, at 174. The creditor then sought authority by the bankruptcy court to enforce its lien through a sale of the residence. *Id.*

The bankruptcy court denied the motion, holding that § 522(c) "protected [the debtor's] entire residence from a lien for the type of nondischargeable debt held by" the creditor. *Id.* Despite the bankruptcy court's ruling, the judicial lien was not released and remained of record. *Id.* Later, the debtor sought to sell his residence and, because the lien remained attached to the residence, the debtor moved to hold the creditor in contempt for refusing to voluntarily release its lien. *Id.* The creditor argued that there was nonexempt equity in the residence and that its lien properly attached to the nonexempt equity. *Id.* The bankruptcy court disagreed, again holding that § 522(c) protected the debtor's entire residence. *Id.* The creditor appealed. *Id.*

On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") first discussed the application of § 522(c) in general:

Section 523, which is incorporated in part by § 522(c), provides an exception from discharge for certain types of debts. Section 522(c) then specifies certain nondischargeable debts which may be pursued against a debtor's exempted property. These include debts for taxes (§ 523(a)(1)), alimony, maintenance or support (§ 523(a)(5)), debts of the type described in § 523(a)(4) and (a)(6) owed to federal depositories, or debts in connection with educational financial assistance fraud.

The legislative history of this section also shows that it was enacted to insulate exempt property from any nondischargeable prepetition debts which are not listed as exceptions. *See* S.Rep. No. 95-989, at 76 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5862; H.R.Rep. No. 95-595, at 361 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6317.

Section 522(c)(2) further denies a debtor's exemption for valid liens, such as tax liens and liens that have not been avoided in bankruptcy.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

The rule of *Long v. Bullard*, 117 U.S. 617, 620–21, 6 S.Ct. 917, 29 L.Ed. 1004 (1886), that unchallenged liens pass through bankruptcy unaffected, was codified in § 522(c) to uphold the enforcement of valid liens on both exempt and nonexempt property. H.R.Rep. No. 95–595, *supra*, at 361. A lien creditor, whose lien has not been avoided in bankruptcy, is generally free to pursue its *in rem* remedies under state law, subject to the provisions of the automatic stay in § 362(a). *Johnson v. Home State Bank*, 501 U.S. 78, 82–84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991).

Thus, § 522(c) performs both a protective function, by preserving the exemption if nondischargeable claims other than those specifically excepted by § 522(c) are sought to be enforced against exempt property, and a limiting function, by denying the exemption protections for certain kinds of nondischargeable claims and unavoided liens.

*Id.*, at 176–77. The BAP disagreed with the bankruptcy court’s holding that the creditor’s lien could not attach to the nonexempt equity in the debtor’s residence, noting that “[i]n this case, ‘property exempted’ in § 522(c) means only the \$100,000 homestead exemption allowed by California exemption law.” *Id.*, at 177. Because there was nonexempt equity in the debtor’s residence, and the lien could not be avoided under 11 U.S.C. § 522(f), the BAP held that the creditor’s lien could attach to the nonexempt equity under 11 U.S.C. § 522(c)(2). *Id.*, at 177-81.

After *Farr*, a bankruptcy court within this circuit considered similar facts. *See In re Feathers*, 2015 WL 1598087 (Bankr. N.D. Cal. 2015). In *Feathers*, the Securities and Exchange Commission (the “SEC”) had a pending action against the debtor at the time the debtor filed his chapter 7 petition. *Id.*, at \*1. Postpetition, the district court entered judgment in favor of the SEC and, subsequently, the SEC obtained a judgment of nondischargeability under 11 U.S.C. § 523(a)(19). *Id.*

After the debtor received his discharge and the debtor’s case was closed, the SEC recorded an abstract of judgment, thereby attaching a judicial lien to the debtor’s real property. *Id.* The debtor then reopened his bankruptcy case and moved for avoidance of the SEC’s lien. *Id.* The bankruptcy court held that the debtor could avoid the lien despite the fact that the judicial lien was recorded postpetition. *Id.*, at \*1-2. As part of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam**

**Chapter 7**

its assessment, the court found:

Reviewed in the context of § 522 as a whole, other provisions "set forth limitations as to when exemptions may or may not trump a creditor's claim or lien rights, but they focus on the nature and timing of the claim, rather than the time when the lien affixed." *Id.* The general rule is that exempt property will not be liable for pre-petition debts but § 522(c) sets forth four exceptions. None of these exceptions apply to the SEC's claim. Further, the fact that Congress created certain exceptions, implies that only those exceptions and no others were intended.

*Id.*, at \*2. After holding that the timing of the lien attachment was not relevant to the question before the court, the court held that the SEC's lien could be avoided under § 522(f):

The plain language of Bankruptcy Code § 522(c) makes clear that property exempted during a bankruptcy case may not be required to satisfy debts that arose prior to the bankruptcy case: "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case." The Code Section then lists four exceptions to the general rule. One of the exceptions is for a debt secured by a lien that is not avoided pursuant to § 522(f). As the SEC's judgment lien may be avoided, this exception does not apply, and Feathers is entitled to his homestead exemption.

*Id.*

This case is similar to *Feathers*. Here, the debt which gave rise to the lien is a prepetition debt. The Law Offices recorded an abstract of judgment after Debtors' discharge. Subsequently, Debtors seek to avoid the lien on the basis that the lien impairs their homestead exemption. Although the debt owed to the Law Offices may be nondischargeable under 11 U.S.C. § 523(a)(3), the lien against the Property may still be avoided under 11 U.S.C. § 522(f). Moreover, under 11 U.S.C. § 522(c), the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Mehdy Gharachehdaghy and Mahnaz Aalam Chapter 7**

lien may not attach to the exempt portion of the Property, either "during *or after* the case." 11 U.S.C. § 522(c) (emphasis added). If Debtors provide sufficient evidence that there is no nonexempt equity in the Property and if Debtors have a valid claim of exemption in the Property, then the Court may avoid the Law Offices' lien, and the Law Offices will not be able to record another abstract of judgment against the Property for a repetition debt.

**III. CONCLUSION**

The Court will continue the hearing on the Motion to **2:00 p.m. on November 8, 2018**. No later than **October 18, 2018**, Debtors must file and serve a supplemental declaration with evidence of the amounts owed to EMC and GMAC as of the petition date. No later than **October 25, 2018**, the Law Offices may file and serve a response to the supplemental declaration.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehdy Gharachehdaghy

Represented By  
Faith A Ford

**Joint Debtor(s):**

Mahnaz Aalam

Represented By  
Faith A Ford

**Trustee(s):**

David R Hagen (TR)

Represented By  
Scott Lee  
Brad Krasnoff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#6.00 Confirmation hearing re First Amended Chapter 11 Plan**

fr. 5/3/18(stip); 6/7/18(stip), 7/19/18(stip) ; 8/16/18; 10/4/18(stip)

Docket 114

**Tentative Ruling:**

At the last hearing, the Court expressed concerns regarding the feasibility of the debtor's proposed chapter 11 plan and whether that plan pays the entire claim of the objecting creditor. The Court continued the hearing in order for the parties to address those issues with supplemental evidence. As of November 5, 2018, the debtor has not provided the Court with any supplemental evidence.

**Ruling from 8/16/18**

Because of the Court's concerns regarding the feasibility of the debtor's proposed chapter 11 plan and whether that plan pays the entire claim of the objecting creditor, in order for the parties to address those issues with supplemental evidence, the Court will continue this hearing.

***Feasibility***

"The debtor carries the burden of proving that a Chapter 11 plan complies with the statutory requirements for confirmation under §§ 1129(a) & (b)." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir. B.A.P. 1994), *aff'd*, 85 F.3d 1415 (9th Cir. 1996). Pursuant to 11 U.S.C. § 1123(a)(5), a chapter 11 plan must provide adequate means for the plan's implementation. Pursuant to 11 U.S.C. § 1129(a)(11), a court can confirm a plan only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The debtor states that he will fund his *First Amended Chapter 11 Plan of Reorganization* (the "Plan") from his regular employment income, his consulting income, distributions/dividends from Master Strategic Group, Inc., his spouse's



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

regular and consulting income, funds in the DIP account, and contributions from his brother. (Brief, doc. 162, at p. 21.) The debtor's average monthly income, as stated in his last six monthly operating reports, is \$15,079.17. The debtor's brother is projected to contribute \$14,700 per month. (Declaration of Dr. Paul A. Nassif, doc. 162, at p. 40.) The debtor's average monthly income, plus his brother's projected contribution, totals \$29,779.17. This amount is less than the \$33,211 projected monthly income stated in the cash flow projections attached to the *First Amended Disclosure Statement*. (Doc. 113, Exh. B.) This amount is also less than the \$33,101 in projected monthly expenses. (*Id.*)

In addition, pursuant to the *Stipulation By Christopher Sabin Nassif and 2005 Residential Trust 3-1 By Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust As Trustee* [doc. 144] and corresponding order [doc. 146], the debtor proposes to pay \$1,000 per month to class 4 general unsecured creditors. This \$1,000 monthly payment is greater than the \$150 monthly payment stated in the cash flow projections. Thus, the debtor's monthly expenses are \$850 more than stated in his projections.

Because of these discrepancies, it does not appear that the debtor will have sufficient income to fund the Plan.

***Bank of New York Mellon's Objection***

Class 1 of the Plan consists of the impaired secured claim of Bank of New York Mellon/Nationstar ("BNYM"), the first priority lienholder against the debtor's residence. According to its filed proof of claim, BNYM holds a secured claim in the amount of \$3,251,939.39, including prepetition arrears of \$631,191. In his July 2018 monthly operating report, the debtor indicates that he has not made 13 postpetition payments to BNYM.

In the Plan, the debtor states his intent to file an adversary proceeding against BNYM, on the grounds that the debtor's loan modification never posted to his account upon its transfer from Bank of America to Nationstar. Under the Plan, the debtor will make contractual monthly mortgage payments of \$10,686, plus \$7,515 per month for 84 months to cure the prepetition arrearages.

On April 13, 2018, BNYM filed an objection to the Plan [doc. 133]. BNYM objects

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

on the following grounds:

- The Plan improperly seeks to modify the right of a claim secured only by the debtor's principal residence, in violation of 11 U.S.C. § 1123(b)(5);
- If the debtor seeks to cure a default under § 1124, the cure must be completed by the Effective Date of the Plan;
- The debtor's calculation of contractual arrears does not address any post-petition arrears;
- The cure term of 84 months amounts to a de facto modification of BNYM's claim, and is neither fair nor equitable; and
- BNYM's treatment is unfair discrimination in violation of § 1123(a)(4).

The Court will overrule BNYM's objection as to § 1123(a)(4). Section 1123(a)(4) provides that a plan shall "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest[.]. BNYM holds the only claim in class 1. As such, the Plan does not discriminate against BNYM's claim in favor of other class 1 claims.

The Court will overrule BNYM's objection as to § 1123(b)(5). Pursuant to 11 U.S.C. § 1123(b)(5), a chapter 11 plan may "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[.]" BNYM argues that the debtor's treatment of its claim violates § 1123(b)(5). However, "cure" and "modification" are not the same. *See In re Lenington*, 288 B.R. 802, 805 (Bankr. C.D. Ill. 2003). Here, the debtor is not proposing to modify the terms of BNYM's mortgage. The debtor proposes to pay postpetition, contractual monthly payments pursuant to the terms of the mortgage. In addition, the debtor proposes to "cure" any arrearages by paying an additional monthly amount to BNYM over an 84-month term. As the *Lenington* court held, "individual Chapter 11 debtors are permitted to cure a prepetition residential mortgage arrearage in installment payments, through the Chapter 11 plan, while remaining current on their postpetition payments." *Lenington*, 288 B.R. at 806. As for the 84-month cure term, BNYM has not provided any authority holding that such a cure term is *per se* unreasonable.

The Court will sustain BNYM's objection as to the amount of postpetition arrearages

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

owed. BNYM is correct that the debtor has not addressed any postpetition arrearages in the Plan.

Pursuant to 11 U.S.C. § 1124, a class is impaired under a plan unless the plan:

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

"[A]ny alteration of a creditor's rights, no matter how minor, constitutes 'impairment.'" *In re Windsor on the River Assocs., Ltd.*, 7 F.3d 127, 130 (8th Cir.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

1993). Enhancing a creditor's rights constitutes "impairment." *In re L & J Anaheim Assocs.*, 995 F.2d 940, 943 (9th Cir. 1993). Under § 1124(2), an individual debtor may reinstate a residential mortgage and "cure" a prepetition arrearage in installment payments under a reorganization plan. "Where a Chapter 11 plan provides for the cure of a default, reinstatement of the original terms of the loan, compensation for damages, and does not otherwise alter the rights of the mortgagee, the claim of the mortgagee is unimpaired[.]" *Lennington*, 288 B.R. at 804. Such cure amount is determined by nonbankruptcy law. 11 U.S.C. § 1123(d).

BNYM argues that any cure under § 1124 must be completed by the effective date of a chapter 11 plan. BNYM is partially correct. The cases cited by BNYM hold that a cure under § 1124 must be completed by the effective date of the plan if the class is to be deemed "unimpaired" under the plan. In *In re Tri-Growth Ctr. City, Ltd.*, 136 B.R. 848, 852 (Bankr. S.D. Cal. 1992), the court held "that the cure required by § 1124 must be completed by the effective date of the plan if the default rate of interest is annulled." In other words, if the full cure amount is not paid on the effective date, the claim remains impaired and is entitled to be paid any default rate of interest under the terms of the loan. In *In re Schatz*, 426 B.R. 24, 28 (Bankr. D.N.H. 2009), the court held that a debtor could "'cure' and 'reinstate' [a creditor's] loans under § 1123(d) over the life of the plan, but [creditor] is entitled to the default interest rate on its claim for the prepetition arrearage and is entitled to prepetition attorneys' fees, expenses, and costs related to the loans." The court in *In re Jones*, 32 B.R. 951, 960 (Bankr. D. Utah 1983), held that "[c]ure and compensation required by Section 1124(2) must be completed by the effective date of the plan if impairment is to be avoided."

Here, the Plan does not seek to treat BNYM's claim as unimpaired. In fact, the Plan explicitly states that class 1 is impaired and that it voted against the Plan.

Accordingly, under the terms of the Plan, it does not appear that the arrearages must be paid in full on the effective date of the Plan. However, pursuant to the authority cited by BNYM, it appears that the debtor's treatment of the class 1 prepetition arrearages does not sufficiently account for any default interest rate, prepetition attorneys' fees, expenses, or costs related to BNYM's loan.

<b>Party Information</b>
--------------------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Christopher Sabin Nassif**

**Chapter 11**

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes  
Roksana D. Moradi

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**1:16-13382 Christopher Sabin Nassif**

**Chapter 11**

**#7.00 Status conference re chapter 11 case**

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;  
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip); 7/19/18(stip);  
8/16/18; 10/4/18(stip)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Sabin Nassif

Represented By  
M Jonathan Hayes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#8.00** Motion for further order extending debtor's exclusivity periods to file chapter 11 plan and solicit acceptances thereto

Docket 174

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10694 Charles Hung Ngo**

**Chapter 7**

**#9.00 Debtor's motion to convert case from chapter 7 to 13**

Docket 33

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On March 19, 2018, Charles Hung Ngo ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

Prior to this case, Debtor filed two bankruptcy cases: (A) a chapter 7 case filed on November 21, 2012, which closed after completion [1:12-bk-20239-MT]; and (B) another chapter 7 case filed on November 23, 2016 that was dismissed based on Debtor's failure to file schedules and statements [1:16-bk-13355-VK].

In his schedule A/B, Debtor listed real property located at 10329 Glade Avenue, Chatsworth, California 91311 (the "Property") and valued the Property at \$420,000. In his schedule C, Debtor claimed a \$90,000 homestead exemption in the Property. In his schedule D, Debtor listed a secured claim encumbering the Property in favor of Bank of America in the amount of \$330,000. As such, by Debtor's calculation, the Property did not have any nonexempt equity.

Debtor also scheduled a Bank of America checking account containing \$3,000 (the "Funds"). Under section 28 of his schedule A/B, Debtor indicated that there are no tax refunds owed to Debtor. Despite this representation, in 2018, Debtor filed his 2016 tax return, anticipating a \$4,134 tax refund owed to Debtor (the "Tax Refund"). Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 41], ¶ 6, Exhibit D.

In his schedule I, Debtor indicated he received \$2,190 in monthly take-home pay. Although Debtor indicated that he is married in his Statement of Financial Affairs, Debtor did not list any income for a non-filing spouse in his schedule I. In his



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Charles Hung Ngo**

**Chapter 7**

schedule J, Debtor indicated he incurs \$3,764 per month in expenses. As a result, Debtor scheduled a deficiency, after paying monthly expenses, of (\$1,574).

On June 4, 2018, the Trustee held a § 341(a) meeting of creditors. Gottlieb Declaration [doc. 41], ¶ 8. At that time, the Trustee requested that Debtor provide the Trustee with a copy of the deed of trust against the Property, a copy of a current loan statement and proof of current insurance. *Id.* The Trustee also requested that Debtor turn over the Funds and the Tax Refund to the estate. *Id.* To date, Debtor has not turned over the requested documents about the Property, the Funds or the Tax Refund; Debtor also has failed to provide the Trustee with a copy of his 2016 state tax return. Gottlieb Declaration, ¶¶ 7, 8.

On June 22, 2018, Debtor filed a motion to dismiss his bankruptcy case (the "Motion to Dismiss") [doc. 12]. In connection with the Motion to Dismiss, Debtor provided a declaration in which Debtor stated that he "was out of work for months" and recently had surgery. Debtor also represented that, because of his physical ailments, Debtor's job was threatened. As stated by Debtor, "I am physically weak and my job is threatened. My supervisor has been very unpleasant due to my inability to engage in the normal routine work I have engaged in the past." Debtor asserted that he was facing financial and medical hardship that would place Debtor in a financial predicament.

On June 28, 2018, the Trustee filed a motion for turnover of property (the "Motion for Turnover") [doc. 18]. In the Motion for Turnover, the Trustee requested an order compelling Debtor to turn over the Funds and the Tax Refund. Debtor opposed the Motion for Turnover [doc. 24], asking the Court to dismiss his case or, in the alternative, allow Debtor to convert his case to a chapter 13 case. On July 19, 2018, the Court held hearings on the Motion to Dismiss and the Motion for Turnover. The Court denied the Motion to Dismiss [doc. 30], but continued the Motion for Turnover to assess Debtor's request for conversion of his case.

On July 31, 2018, Debtor filed a motion to convert this case from a chapter 7 to a chapter 13 case (the "Motion") [doc. 36]. On August 14, 2018, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 41]. In the Opposition, the Trustee asserts that Debtor is requesting conversion to keep the Property from the reach of his creditors, and that Debtor does not have any disposable income with which to fund a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Charles Hung Ngo**

**Chapter 7**

chapter 13 plan. The Trustee also states that liquidation of the Property will enable the Trustee to pay claims promptly, in full. The Trustee includes a declaration by a real estate agent, valuing the Property between \$610,000 and \$650,000. Declaration of Steve Flores, ¶ 5.

On October 19, 2018, Debtor filed a reply to the Opposition (the "Reply") [doc. 54]. In the Reply, Debtor contends that his gross income has increased to \$5,900 per month and that his spouse owns a salon and earns approximately \$2,500 per month in net income, as a manicurist. Debtor also states that his brother-in-law has agreed to help fund a chapter 13 plan. The Reply does not include a declaration by Debtor's spouse or his brother-in-law, or any documentary evidence regarding their alleged incomes. In contrast to the lower value in Debtor's schedules, Debtor now acknowledges that the Property is valued between \$519,421 and \$710,197 and has considerable nonexempt equity.

## **II. ANALYSIS**

Pursuant to 11 U.S.C. § 706(a) & (d)—

(a) 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. Any waiver of the right to convert a case under this subsection is unenforceable.

...

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Pursuant to 11 U.S.C. § 109(e)—

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725<sup>1</sup> and noncontingent, liquidated, secured debts of less

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Charles Hung Ngo**

**Chapter 7**

than \$1,184,200<sup>1</sup>, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$394,725<sup>1</sup> and noncontingent, liquidated, secured debts of less than \$1,184,200<sup>1</sup> may be a debtor under chapter 13 of this title.

The right to convert under this section is not absolute. In *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007), the Supreme Court of the United States determined that a debtor forfeits his right to convert to chapter 13 under § 706(a) if the debtor engages in bad faith conduct that would warrant dismissal or reconversion of a chapter 13 case. In *Marrama*, the debtor, Robert Marrama, made misleading or inaccurate statements in his chapter 7 schedules, and engaged in fraudulent transfers prepetition with the intent of shielding his valuable property from creditors. *Id.*, at 368. After the chapter 7 trustee informed Mr. Marrama of his intent to recover the fraudulently transferred property for the benefit of the estate, Mr. Marrama moved to convert his case to a chapter 13 case. *Id.*, at 368-69. The chapter 7 trustee objected to the conversion based on Mr. Marrama's bad faith attempts to conceal the transferred property. *Id.*, at 369. Mr. Marrama argued he had an absolute right to convert to chapter 13 under 11 U.S.C. § 706(a). *Id.*

The Supreme Court first determined there was no absolute right to conversion because of § 706(d), which requires a debtor be eligible to be a debtor under the chapter to which he wishes to convert. *Id.*, at 372. The Supreme Court then looked to the reasons why a debtor may not qualify to be debtor under chapter 13, such as 11 U.S.C. § 109(e) (which sets forth the Code's requirements for being a chapter 13 debtor) or, more importantly, for "cause," under § 1307(c) (which sets forth the standards for dismissal or conversion under chapter 13). *Id.* The *Marrama* court noted that, under § 1307(c), bad faith conduct may constitute "cause" warranting dismissal or conversion. *Id.*, at 373. Thus, a debtor's bad faith conduct could be grounds to deny a motion for conversion under § 706. *Id.*

To determine whether a case was filed in bad faith under § 1307(c), bankruptcy courts must review the totality of the circumstances. *In re Ellsworth*, 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011). Bankruptcy courts consider the following factors:

1. Whether the debtor misrepresented facts in his petition or plan, unfairly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Charles Hung Ngo**

**Chapter 7**

manipulated the Code, or otherwise filed his petition or plan in an inequitable manner;

2. The debtor's history of filing and dismissals;
3. Whether the debtor intended to defeat state court litigation; and
4. Whether egregious behavior is present.

*In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Here, Debtor's bad faith conduct constitutes "cause" that would warrant dismissal of a chapter 13 case. In his schedule A/B, Debtor undervalued the Property and represented that the Property did not have any nonexempt equity. After the Trustee requested documentation regarding the Property and turnover of the Funds and the Tax Refund, Debtor did not comply with the Trustee's request for turnover; instead, Debtor moved for dismissal of his case.

In schedule E/F, Debtor identifies \$55,000 in aggregate unsecured nonpriority claims. In his schedule I, Debtor represented that he receives \$4,320 in monthly income, which results in \$2,190 in monthly net income; Debtor did not schedule any income received by his spouse. In the Motion to Dismiss, Debtor asserted that he was facing financial hardship because of recent health issues and that he had been out of work for months. Now, in connection with his request for conversion of this case, Debtor contends his monthly income has increased to \$5,900 per month. Moreover, despite failing to state any income generated by his spouse in his schedule I, and reporting a monthly deficit in his schedule J, Debtor now represents that his wife owns a salon and generates approximately \$2,500 per month. Finally, Debtor now concedes that the Property has sufficient nonexempt equity for creditors to be paid in full.

In light of these facts, Debtor's conduct amounts to bad faith as contemplated by *Marrama*. Debtor misrepresented the value of the Property, his income and his ability to fund a chapter 13 plan in his schedules (or he now is exaggerating his ability to fund a chapter 13 plan), and he resisted the Trustee's request for turnover of any documentation related to the Property. Rather than comply with the Trustee's request for turnover of the Funds and Tax Refund, Debtor attempted to dismiss his case,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Charles Hung Ngo**

**Chapter 7**

representing that Debtor is ill and facing financial hardship. When the Court denied the Motion to Dismiss, Debtor changed his narrative. Currently, Debtor represents that he and his spouse generate significant monthly income, which is sufficient to fund a chapter 13 plan. Debtor appears to be making contradictory statements to obtain conversion of his case, which would prevent a sale of the Property and obviate Debtor's obligation to turn over the Funds and the Tax Refund to the Trustee. Moreover, Debtor's revision of critical facts regarding his financial stability, his income, and his spouse's income has resulted in the loss of his credibility. Given Debtor's bad faith conduct, the Court will deny the Motion.

**III. CONCLUSION**

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles Hung Ngo

Represented By  
Philomena N Nzegge

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Carmela Pagay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 8, 2018**

**Hearing Room 301**

2:00 PM

**1:14-14939 Peter Brook**

**Chapter 11**

**#10.00** First amended motion for entry of discharge and final decree closing chapter 11 case

fr. 11/1/18

Docket 214

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Peter Brook

Represented By  
Nam H. Le  
Michael J Jaurigue  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10378 Kandy Kiss of California, Inc.**

**Chapter 7**

**#1.00** Motion for relief from stay [AN]

IDFIX, Inc.  
VS  
DEBTOR

fr. 4/18/18; 6/20/18; 9/12/18;

Docket 137

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Tentative Ruling from June 20, 2018**

Deny relief from the automatic stay.

In order to provide additional time for the chapter 7 trustee (the "Trustee") to determine whether he would proceed with the state court litigation, and for the parties to explore mediation of their dispute, the Court continued the prior hearing on this matter. The parties were instructed to file a status report no later than June 6, 2018.

On June 6, 2018, movant filed a unilateral status report [doc. 142]. Movant states that on April 26, 2018, the state court sustained movant's demurrer and gave the Trustee 10 days to file an amended complaint. As of the date of the status report, movant states that the Trustee has not done so. Movant further states that the state court set a trial date for the debtor's affirmative claims for February 19, 2019.

The unilateral status report is not supported by declaration or other evidence. If the statements in the unilateral status report are correct, it appears that the Trustee does not intend to pursue the debtor's claims against Movant in state court.

Even if mandatory abstention applies to the parties' state court litigation, mandatory abstention alone does not necessarily establish "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). In *Benedor Corp. v. Conejo Enterprises, Inc.* (*In re*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

*Conejo Enterprises, Inc.*), 96 F.3d 346 (9th Cir. 1996), a chapter 11 debtor removed a creditor's state court breach of contract action against the debtor to bankruptcy court. The creditor moved for abstention, remand, and relief from the automatic stay, which the bankruptcy court denied. The district court reversed the bankruptcy court, holding that because mandatory abstention applied, there was cause for relief from the automatic stay. With respect to cause for relief from the automatic stay, the Ninth Circuit Court of Appeals reversed the decision of the district court:

"[A] finding that mandatory abstention applies to the underlying state action does not preclude denial of relief from § 362's automatic stay. . . . [Section] 362(b) provides explicit exceptions to § 362(a)'s automatic stay. Pending state actions that are determined to be non-core proceedings are not listed among the explicit exemptions. Therefore, it is clear that Congress did not intend to provide an exception to the automatic stay for non-core pending state actions which are subject to mandatory abstention. In fact, Congress has made it clear that it intended just the opposite by providing that a decision to abstain under § 1334(c)(2) "shall not be construed to limit the applicability of the stay provided for by [§ 362] . . . ." 28 U.S.C. § 1334(c)(2)[.]

*Id.* at 352. The Ninth Circuit Court of Appeals found that the bankruptcy court had reasonably considered the following grounds in denying relief from stay: whether the creditor would file a proof of claim in the debtor's case, or waive its right to payment from the bankruptcy estate, and that judicial economy would be promoted by limiting duplicative litigation. As the Court of Appeals noted:

[t]he filing of a proof of claim by [creditor] must also be considered in determining whether cause exists for lifting the automatic stay. In holding that the automatic stay must be lifted, the district court ignored the filing of the proof of claim, instead focusing on its finding that the state court action was not within the bankruptcy court's core jurisdiction. We hold that the district court erred in doing so.

The allowance and disallowance of claims against the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Once [creditor] filed its proof of claim, it subjected its claim to the core jurisdiction of the bankruptcy court. It was within the sound discretion of the bankruptcy court to



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Kandy Kiss of California, Inc.**  
deny relief from the automatic stay.

**Chapter 7**

*Id.* at 353.

Here, on October 6, 2017, movant filed proof of claim 6-1 in the debtor's bankruptcy case. The filing of this proof of claim subjects movant's claim to the core jurisdiction of this Court, subject to payment under the Bankruptcy Code's distribution scheme along with other filed claims. Pursuant to *Conejo Enterprises*, this Court is within its sound discretion to deny movant's request for relief from the automatic stay, for the reason set forth in the Court's prior tentative ruling.

The Trustee must submit the order within seven (7) days.

**Tentative ruling from 4/18/18**

Deny.

**I. BACKGROUND**

Kandy Kiss of California, Inc. (the "Debtor") is a California corporation that was in the business of design, product development, wholesale manufacture, and sale of apparel to large retailers. IDFIX, Inc. ("Movant") produced fabric and garments for the Debtor.

In 2015, the Debtor and Movant had a dispute over certain garments that Movant produced for the Debtor. The Debtor refused to pay for the alleged nonconforming garments, which cost a total of \$2,462,097.88 [doc. 137, Exh. A]. On July 14, 2016, the Debtor filed in state court a complaint against Movant and three other defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "State Court Action") [doc. 137, Exh A]. On December 1, 2016, Movant filed a cross-complaint against the Debtor and three other cross-defendants, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, open book account, account stated, unjust enrichment, and fraudulent concealment (the "Cross-Complaint") [doc. 137, Exh A].

On February 14, 2017, an involuntary petition was filed against the Debtor. The State Court Action was stayed pursuant to the automatic stay. On September 19, 2017, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

---

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

Chapter 7

order for relief was entered in the Debtor's case [doc. 63].

On March 15, 2018, Movant filed a motion for relief from the automatic stay to proceed with the Cross-Complaint against the Debtor in the State Court Action (the "Motion") [doc. 137]. In the Motion, Movant argues that the Court must abstain from hearing the State Court Action because mandatory abstention under 28 U.S.C. § 1334(c) constitutes cause for lifting the automatic stay. Movant also argues that relief from the automatic stay is proper using the multi-factor test from *In re Sonnax Indus., Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990).

On April 4, 2018, the chapter 7 trustee ("Trustee") filed an opposition to the Motion (the "Opposition") [doc. 139]. On April 11, 2018, Movant filed a reply to the Opposition [doc. 140].

## II. DISCUSSION

### A. *Mandatory Abstention*

28 U.S.C § 1334(c)(2) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Mandatory abstention under 28 U.S.C. § 1334(c)(2) requires that the following seven elements be met:

(1) A timely motion; (2) a purely state law question; (3) a non-core proceeding § 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

Chapter 7

*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. B.A.P. 2001).

For the Court to be required to abstain, all seven elements of mandatory abstention must be present. Here the Motion was timely filed and there is no independent basis for federal jurisdiction outside of Title 11 of the United States Code as the Cross-Complaint alleges purely state law questions. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise raise any bankruptcy issues or impede the Trustee's administration of the case. Moreover, the State Court Action was commenced in state court and the state court has jurisdiction over the State Court Action.

However, it is unclear whether the state court can timely adjudicate the State Court Action. Compare *In re Eastport Associates*, 935 F.2d 1071, 1078-79 (9th Cir. 1991) (holding that the state court could not timely adjudicate the matter where parties would have to start litigation over in state court); and *In re Smith*, 389 B.R. 902, 921 n. 18 (Bankr. D. Nev. 2008) (noting that "there can be no timely adjudication" where the bankruptcy court can hear the matter before the state court); with *Bowen Corp. v. Sec. Pac. Bank Idaho, F.S.B.*, 150 B.R. 777, 784 (Bankr. D. Idaho 1993) (finding the state court could adjudicate the matter much more quickly because a motion for summary judgment had already been filed and was pending before the action was removed to federal court). "[T]he party moving for abstention will bear the burden of demonstrating that a state court action can be timely adjudicated." *In re First All. Mortgage Co.*, 269 B.R. 449, 455 (C.D. Cal. 2001). There is no trial set in the State Court Action and few resources have been expended in preparation for a trial in the State Court Action [doc. 140]. The parties would need to prosecute the State Court Action from start to finish because it was stayed in the early stages of litigation. Movant has not provided any evidence that the State Court Action can be timely adjudicated. On the other hand, if necessary, this Court could estimate Movant's claim sooner than the state court would be able to fully adjudicate the State Court Action and liquidate Movant's claim. Accordingly, it does not appear that all elements for mandatory abstention have been met.

**B. Relief from the Automatic Stay**

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. See *Christensen v. Tucson Estates, Inc.* (*In re Tucson Estates, Inc.*), 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

"the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum 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 as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest 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.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also Sonnax*, 907 F.2d at 1286 (listing factors). When applied to the pending Motion and case, the *Sonnax* factors do not appear to support relief from the automatic stay.

***Whether the relief will result in a partial or complete resolution of the issues***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

This factor weighs against lifting the automatic stay. Allowing the State Court Action to proceed in state court would not allow immediate and complete resolution of the dispute between Movant and the Debtor. The state court can adjudicate the claims and cross-claims between the parties; however, Movant would still need to file a proof of claim in the Debtor's bankruptcy case in order to receive a distribution from the Trustee.

***The lack of any connection with or interference with the bankruptcy case***

This factor weighs against lifting the automatic stay. Although the State Court Action may have an effect on future distribution to creditors, the Cross-Complaint does not otherwise deal with any bankruptcy issues. However, if the Trustee were required to litigate the State Court Action in a different forum, such litigation may impede the Trustee's administration of the case.

***Whether the foreign proceeding involves the debtor as a fiduciary***

The State Court Action does not involve the Debtor's conduct as a fiduciary.

***Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases***

The Trustee contends that Movant has not met its burden to show that extraordinary circumstances exist for deviating from the well-established bankruptcy claims resolution process. The Court agrees.

***Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation***

It is unclear whether the Debtor's insurance carrier, if any, has paid for costs of defending the State Court Action.

***Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties***

Movant argues there is no prejudice because all creditors will get paid a pro-rata share. However, the cost of liquidating Movant's claim in the State Court Action, potentially without any reason for doing so, may decrease the amount of funds

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

Chapter 7

available for unsecured creditors. This factor weighs against lifting the automatic stay.

***Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c)***

At this time, it does not appear that any resulting judgment that Movant may obtain in the State Court Action would be subject to equitable subordination.

***The interest of judicial economy and the expeditious and economical determination of litigation for the parties***

This factor weighs in favor of lifting the automatic stay. The Debtor is one of four cross-defendants in the State Court Action. If the Court lifted the automatic stay, it would minimize potentially duplicative litigation in two different forums.

***Whether the foreign proceedings have progressed to the point where the parties are prepared for trial***

This factor weighs against lifting the automatic stay, because the State Court Action has not progressed to the point where the parties are prepared for trial. The State Court Action was stayed at the early stages of litigation. The parties have not expended significant resources in the State Court Action that would go to waste if the Court denies the Motion.

***The impact of the stay on the parties and the "balance of the hurt."***

Entry of judgment in the State Court Action would prejudice the Debtor. However, the Court can prohibit any enforcement of the judgment against the Debtor or the Debtor's estate during the pendency of its bankruptcy case. Still, lifting the stay does not appear warranted here because the State Court Action is at a very early stage, and allowing the parties to litigate the State Court Action may impede the administration of the Debtor's estate.

Movant contends that the Court lifting the automatic stay will ensure a level playing field because the Trustee is currently free to prosecute the State Court Action, but Movant is prevented from doing so by the automatic stay. However, the Trustee has not determined whether he will prosecute any of the Debtor's affirmative claims.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

CONT... **Kandy Kiss of California, Inc.**

**Chapter 7**

Because the Trustee is not presently prosecuting the State Court Action, there is no need at this time for the Court to level the playing field. Accordingly, the "balance of the hurt" weighs against lifting the automatic stay.

**III. CONCLUSION**

In light of the foregoing, Movant has not shown that mandatory abstention under 28 U.S.C. § 1334(c)(2) applies to the State Court Action. In addition, the *Sonnax* factors weigh against lifting the automatic stay. Movant has not shown sufficient cause under 11 U.S.C § 362(d)(1) to warrant relief from the automatic stay to proceed with the nonbankruptcy action against the Debtor.

Notwithstanding the foregoing, Movant may proceed against the non-debtor defendants in the nonbankruptcy action. Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 in the Debtor's bankruptcy case.

The Trustee must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Kandy Kiss of California, Inc.

Represented By  
Beth Gaschen  
Steven T Gubner  
Jessica L Bagdanov

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Daniel A Lev  
Steven T Gubner

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:15-13626 Dwayne Rice Corbitt

Chapter 13

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 9/12/18; 10/3/18; 10/17/18

Docket 103

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

**Tentative Ruling from 9/12/18**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Dwayne Rice Corbitt**

**Chapter 13**

**Party Information**

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK N.A.  
VS  
DEBTOR

fr. 8/22/18(stip); 10/3/18

**Stip for adequate protection filed 10/24/18**

Docket 56

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
10/25/18 [Dkt 64]

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

JeanPaul Reneaux

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-11342 Victory Entertainment Inc

Chapter 7

#4.00 Motion for relief from stay [AN]

SALAZAR CLASS ACTION PLAINTIFFS AND PLAINTIFFS' COUSEL  
VS  
DEBTOR

Docket 126

\*\*\* VACATED \*\*\* REASON: Motion is not in compliance with local  
bankruptcy rules 5005-2(d)(1), 9013-1(d) and 9013-3(b). Motion is OFF  
calendar.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Elissa Miller

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-11299 James Lamont Dubose

Chapter 7

#5.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 61

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Lamont Dubose

Represented By  
Stephen L Burton

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... James Lamont Dubose**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-11299 James Lamont Dubose

Chapter 7

#6.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC  
VS  
DEBTOR

Docket 62

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

James Lamont Dubose

Represented By  
Stephen L Burton

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... James Lamont Dubose**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-12265 Susan Ann Ross

Chapter 7

#7.00 Motion for relief from stay [PP]

WELLS FARGO BANK N.A  
VS  
DEBTOR

Docket 9

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Susan Ann Ross

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Susan Ann Ross**

**Chapter 7**

Danny K Agai

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-11105 Debby Sandra Levy

Chapter 13

#8.00 Motion for relief from stay [PP]

HYUNDAI LEASE TITLING TRUST  
VS  
DEBTOR

Docket 29

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Debby Sandra Levy

Represented By  
Rob R Nichols

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Debby Sandra Levy**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**1:13-16706 Hector Cahuantzi Gutierrez**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

US BANK N.A.  
VS  
DEBTOR

Docket 80

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hector Cahuantzi Gutierrez

Represented By  
Rabin J Pournazarian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:17-13303 Leonarda G Aguilar

Chapter 13

#10.00 Motion for relief from stay [RP]

LEONARDA G AGUILAR  
VS  
DEBTOR

Docket 44

\*\*\* VACATED \*\*\* REASON: On November 6, 2018, the Court entered an order dismissing the debtor's case [doc. 46]. The motion is moot.

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Leonarda G Aguilar

Represented By  
Todd J Roberts

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-12592 Mario Alberto Cerritos

Chapter 13

#11.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

The Court will grant the motion on an interim basis and continue the hearing to **January 23, 2019 at 9:30 a.m.** Any continuance of the stay thereafter will be dependent on the debtor filing evidence that he has made his plan payments and postpetition deed of trust payments through December 2018, *i.e.*, by filing a properly completed and substantiated Declaration Setting Forth Postpetition, Preconfirmation Deed of Trust Payments Official Form F 3015-1.4, at least two weeks prior to the continued hearing on this motion.

Movant must submit order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mario Alberto Cerritos

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

9:30 AM

1:18-12541 Caridad Salas Hileman

Chapter 13

#11.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 12

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

The Court will grant the motion on an interim basis and continue the hearing to **December 19, 2018 at 9:30 a.m.** The debtor has not served the motion and notice thereof on *all* creditors, including Wells Fargo Bank, NA and Ocwen Loan Servicing, LLC in accordance with Fed. R. Bankr. P. 9013(b) and 7004(b)(3) and (h) and Local Bankruptcy Rule 9013-1(a) (6), *i.e.*, by delivering a copy of the motion and notice thereof to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process. No later than **November 21, 2018**, the debtor must file and serve notice of the continued hearing, and the deadline to file a response 14 days prior thereto, on *all* creditors.

**Party Information**

**Debtor(s):**

Caridad Salas Hileman

Represented By  
Ryan A. Stubbe

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11580 Kaliston Jose Nader**

**Chapter 11**

**#12.00** Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 47

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

There is cause to grant relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(4). Kaliston Jose Nader (the "Debtor") filed an opposition [doc. 51] to the motion which does not include a declaration signed under penalty of perjury.

Movant is the beneficiary of a trust deed encumbering the real property at issue, located at 17272 Simonds Street, Granada Hills, California 91344 (the "Property"). As of the filing of its motion, movant held a secured claim in the amount of \$785,628.12. Norio Hara ("Hara") is the identified borrower on movant's trust deed and promissory note [doc. 47, Exhs. A and C]. Movant states in the motion that fifty-four payments have come due and were not paid, totaling \$116,168.22 in arrears.

On May 2, 2007, movant recorded a notice of default against the Property. On August 6, 2007, movant recorded a notice of sale with a Trustee Sale date of August 23, 2007.

On September 12, 2007, an unauthorized grant deed was recorded in the Los Angeles County Recorder's office whereby Hara, a married man, transferred his interest in the Property, as a gift for no consideration, to the Debtor, a single man, and Ramil V. Palafox, a married man as his sole and separate property, as joint tenants [doc. 47, Exh. D].

On April 28, 2010, the Debtor filed a voluntary chapter 13 petition, case no. 1:10-bk-14973-AA (the "First Bankruptcy Case"). The Debtor listed the Property as a rental property. On June 8, 2012, the Court dismissed the First Bankruptcy Case because the



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kaliston Jose Nader**

**Chapter 11**

Debtor failed to make his plan payments [doc. 47, Exh. I].

On July 18, 2012, Hara filed a voluntary chapter 13 petition, case no. 1:12-bk-16467-MT ("Hara's Bankruptcy Case"). Hara listed the Property as the residence address. On August 17, 2012, the Court dismissed Hara's Bankruptcy Case because he failed to file schedules, statements and a plan [doc. 47, Exh. J].

On March 8, 2013, the Debtor filed a voluntary chapter 7 petition, case no. 2:13-bk-16070-TD (the "Second Bankruptcy Case"). The Debtor listed the Property as his residence address. On May 16, 2013, the Court dismissed the Second Bankruptcy Case for failure to appear at the § 341(a) meeting of creditors [doc. Exh. I].

On May 30, 2013, the Debtor filed a voluntary chapter 7 petition, case no. 2:13-bk-24138-TD (the "Third Bankruptcy Case"). The Debtor listed the Property as his residence address. On September 3, 2018, the Debtor received a discharge in the Third Bankruptcy Case [doc. 47, Exh. I].

On February 21, 2014, Hara obtained a loan modification for the loan secured by the Property [doc. 47, Exh. F]. On January 27, 2016, movant recorded a notice of default against the Property. On April 27, 2018, movant recorded a notice of sale with a Trustee Sale date of May 22, 2018, which was postponed to June 26, 2018.

Four days before the foreclosure sale, on June 22, 2018, the Debtor filed the pending case and listed the Property as his primary residence [doc. 1]. On his Schedule A/B, the Debtor states that he shares 50% ownership of the Property with his ex-business partner Ramil. V. Palafox. The Debtor further indicates that Hara is the original borrower for the secured debt.

11 U.S.C. § 362(d)(4) provides:

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 conditioning such stay—

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Kaliston Jose Nader**

**Chapter 11**

in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

The Court concludes that the Debtor's filing of the petition in this chapter 11 case was part of a scheme to delay, hinder, or defraud creditors. Hara was previously approved for a loan modification agreement, and did not make required payments under the terms of that agreement. In his opposition, the Debtor does not address his ability to pay movant's claim, secured by Debtor's residence.

In addition to the foregoing, the multiple bankruptcy filings by the Debtor and Hara, the dismissal of three prior bankruptcy cases affecting the Property and the Debtor's ongoing failure to make deed of trust payments, justify relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and the provision of *in rem* relief pursuant to 11 U.S.C. § 362(d)(4).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kaliston Jose Nader**

**Chapter 11**

Movant must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Kaliston Jose Nader

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#13.00** Order to show cause why this adversary proceeding should not be dismissed for failure to prosecute

Docket 17

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel  
Giovanni Orantes

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

1:30 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

Adv#: 1:17-01091 VAFI v. Akhlaghpour

**#14.00** Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. Code § 523(a)(4) and 11 U.S.C. § 523(a)(6) and §523(a)(2)(A)

fr. 1/10/18; 1/24/18, 6/6/18; 6/20/18; 10/17/18

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

On October 20, 2018, the plaintiff filed the *Stipulation for Entry of Judgment against Mehri Akhlaghpour aka Mary Akhlaghpour* (the "Stipulation") [doc. 19]. In the Stipulation, the parties agreed that the plaintiff will lodge a stipulated judgment with the Court. The plaintiff has not lodged the stipulated judgment. In addition, the Stipulation provides that a copy of the form of the stipulated judgment is attached as Exhibit 1. However, the parties did not include this attachment with the Stipulation.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**Defendant(s):**

Mehri Akhlaghpour

Pro Se

**Plaintiff(s):**

MEHRDAD VAFI

Represented By  
Farrah Mirabel

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

- #15.00** Pretrial conference re: complaint for:
1. denial of debtor's discharge [11 U.S.C. § 727]
  2. determination that debt is non-dischargeable [11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 2/7/18; 10/17/18(stip)

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

Contrary to Federal Rule of Bankruptcy Procedure 7041, the plaintiffs did not file a notice of their intent to dismiss their claims under 11 U.S.C. § 727 in the debtor's bankruptcy case. The plaintiffs must file the notice of their intent to dismiss these claims and serve the notice on the U.S. Trustee, the chapter 7 trustee and all creditors of the estate. The notice must provide that, if a party in interest elects to substitute into this action, the party in interest must file a notice of substitution no later than **December 5, 2018**.

In their motion to dismiss [doc. 70], the plaintiffs indicate that the Court denied the debtor's discharge under 11 U.S.C. § 727(a)(4). This is inaccurate; although the plaintiffs proved that the defendant made certain material false oaths, the Court held that the plaintiff *did not* meet their burden as to the intent elements under 11 U.S.C. § 727(a)(4). The Court also held that it would adjudicate these elements at trial.

As such, the Court has not denied the debtor his discharge. Rather, the Court partially adjudicated **certain elements** from the plaintiffs' denial of discharge claims, under 11 U.S.C. § 727(a)(4). Consequently, the notice filed by the plaintiffs may **not** represent that the Court has denied the debtor his discharge, to date.

The Court will continue this status conference to **1:30 p.m. on December 12, 2018**.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

If the plaintiffs file and serve the notice of their intent to dismiss the 11 U.S.C. § 727 claims by **November 21, 2018**, and the United States Trustee or a party in interest does not elect to substitute into this adversary proceeding, the Court will enter an order dismissing this adversary proceeding.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

1:30 PM

**1:13-11215 Cindy M Montano**

**Chapter 7**

Adv#: 1:17-01111 Melendrez v. Montano

**#16.00** Status conference re complaint for determination  
of the dischargeability of a claim

from: 2/14/18; 8/22/18; 9/5/18; 10/10/18

Docket 1

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

On October 16, 2018, the parties' mediator filed a certificate indicating that the parties did not settle after mediation [doc. 16]. In light of the certificate, no later than **December 19, 2018**, the parties must file a joint pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1(b). The Court will hold a pretrial conference at **1:30 p.m. on January 9, 2019**.

The plaintiff must submit a scheduling order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Cindy M Montano Pro Se

**Defendant(s):**

Cindy M Montano Pro Se

**Plaintiff(s):**

Antonio Melendrez Represented By  
Michael J Armenta

**Trustee(s):**

Amy L Goldman (TR) Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

1:30 PM

**1:18-10732 Francois E. Franckaert Mendoza**

**Chapter 7**

Adv#: 1:18-01078 United States Trustee for the Central District of v. Franckert Mendoza

**#17.00** Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. §§ 727(a)(3) and 727(a)(5)

fr. 9/12/18;

Docket 1

\*\*\* VACATED \*\*\* REASON: Default judgment entered on 11/13/18 [doc. 20].

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Francois E. Franckaert Mendoza

Represented By  
Elena Steers

**Defendant(s):**

Francois Franckert Mendoza

Pro Se

**Plaintiff(s):**

United States Trustee for the Central

Represented By  
Russell Clementson

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

1:30 PM

**1:18-11150 Robert Edward Zuckerman**

**Chapter 11**

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #18.00** Status conference re: first amended complaint for:
- 1) Declaratory and injunctive relief re: determination of validity, priority or extent of interest in property
  - 2) Declaratory and injunctive relief re: determination of validity, priority, or extent of lien
  - 3) Turnover of property of the estate pursuant to 11 U.S.C. 542
  - 4) Avoidance of pre-petition transfers pursuant to 11 U.S.C. 547(b)
  - 5) Avoidance of post-petition transfers pursuant to 11 U.S.C. 549(a)
  - 6) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(b)

**Order appr stip to cont hrg ent 11/12/18**

Docket 11

\*\*\* VACATED \*\*\* REASON: Continued to 1/9/19 at 1:30 per order

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig

**Defendant(s):**

Robert Edward Zuckerman

Pro Se

Continental Communities, LLC, a

Pro Se

Valley Circle Estates Realty Co., a

Pro Se

Zuckerman Building Company, a

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Robert Edward Zuckerman Chapter 11**

Contiental San Jacinto, LLC, a	Pro Se
San Jacinto Z, LLC, a California	Pro Se
Rezinate San Jacinto, LLC, a	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
Nickki B Allen, an individual	Pro Se
DOES 1-20	Pro Se
Phoenix Holdings, LLC a California	Pro Se
Sunderland/McCutchan LLP, a	Pro Se
B. Edward McCutchan Jr. an	Pro Se

**Plaintiff(s):**

Richard Abel	Pro Se
--------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#19.00** Motion for award of attorney's fees

Docket 300

**Judge:**

- NONE LISTED -

**Tentative Ruling:**

The Court will continue this hearing to **2:30 p.m on November 28, 2018.**

Appearances on November 14, 2018 are excused.

**Party Information**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

**1:13-13879 James Ellis Arden**

**Chapter 7**

Adv#: 1:13-01164 Silas v. Arden

- #20.00** Ruling on trial re complaint for:  
(1) Non-Dischargeability of Debt Pursuant to - 523(a)(6),  
(2) Non-Dischargeability of Debt Pursuant to - 523(a)(2),  
(3) Non-Dischargeability of Debt Pursuant to - 727; and  
(4) Declaratory Judgment Regarding Dischargeability

fr. 11/15/17; 12/20/17(stip); 12/21/17; 2/7/18; 5/25/18;  
7/16/18; 7/30/18; 10/31/18

Docket 1

**Judge:**

The Court will enter judgment in favor of Martina Silas ("Plaintiff"). Appearances should not be made.

**I. BACKGROUND**

***A. The Metrocolor Action***

On September 21, 1995, Plaintiff, on behalf of the Law Offices of Silas & Bissell (the "Law Offices"), and Ross C. Gunnell, entered into the *Contract for Professional Services* (the "Retainer Agreement"), through which the Law Offices agreed to represent Mr. Gunnell in an action against Metrocolor Laboratories, Inc. ("Metrocolor"), Eastman Kodak Company ("Kodak") and Van Waters & Rogers, Inc. ("VWR"), among others (the "Metrocolor Action"). Plaintiff's Exhibit 4 [FN1].

The Retainer Agreement provided that Mr. Gunnell was responsible for reimbursing the Law Offices for the costs and expenses incurred by the Law Offices in connection with the prosecution of the Metrocolor Action. *Id.* Through the Retainer Agreement, Mr. Gunnell also agreed that he would reimburse the Law Offices' costs and expenses from any recovery or distribution to Mr. Gunnell. *Id.* Mr. Gunnell agreed to a "net

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT... James Ellis Arden

Chapter 7

recovery" after deduction of such costs and expenses. *Id.* In addition, through the Retainer Agreement, Mr. Gunnell gave Plaintiff power of attorney to sign settlement checks payable to Mr. Gunnell and settlement agreements on behalf of Mr. Gunnell. *Id.*

The Metrocolor Action arose from Mr. Gunnell's employment with Metrocolor and other defendant entities between February 1989 and June 1989 (the "Employment Period") [FN2]. Defendant's Exhibit A. In the operative complaint filed in the Metrocolor Action (the "Metrocolor Complaint"), Mr. Gunnell alleged that Metrocolor concealed that a cleaning substance Mr. Gunnell used in connection with his employment was toxic. Defendant's Exhibit A; Declaration of Martina A. Silas ("Silas Declaration") [doc. 98], ¶ 7. Mr. Gunnell alleged that his superiors at Metrocolor told him that the substance was safe to use, and as a result, Mr. Gunnell developed cognitive, respiratory and psychological symptoms. *Id.* Based on these allegations, Defendant asserted several causes of action against Metrocolor and the other defendants, including negligence, strict product liability, intentional infliction of emotional distress, civil conspiracy, battery, negligent misrepresentation and fraud. Defendant's Exhibit A.

***B. Settlement with Kodak and VWR***

Prior to trial in the Metrocolor Action, Mr. Gunnell and other plaintiffs settled with two of the defendants, Kodak and VWR. Silas Declaration, ¶ 9; Plaintiff's Exhibits 8, 10. As a result of the settlement, in February 1999, Kodak issued a \$27,500 check to Mr. Gunnell, and VWR issued a \$13,000 check to Mr. Gunnell (the "VWR Check"). Plaintiff's Exhibits 9, 11. Both checks included endorsements in the back of the check bearing signatures in Mr. Gunnell's and Plaintiff's names. *Id.* As relevant to this action, VWR issued the VWR Check "to the order of" both Plaintiff and Mr. Gunnell. Plaintiff's Exhibit 11.

The settlement agreement with VWR was memorialized in a written agreement and mutual release (the "VWR Agreement"). Plaintiff's Exhibit 10. The VWR Agreement included a signature next to Mr. Gunnell's name, as well as signatures by three other

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

plaintiffs. *Id.* Mr. Gunnell's signature also appeared in an appendix to the VWR Agreement, in which VWR agreed to pay Mr. Gunnell \$13,000 [FN3]. The VWR Agreement also included an all-purpose acknowledgement signed by a notary public. *Id.* In the all-purpose acknowledgement, the notary public stated that Mr. Gunnell personally appeared to sign the VWR Agreement. *Id.* The all-purpose acknowledgment included an optional section, which called for a description of the document that was signed, that the notary public left blank. *Id.*

By the time Mr. Gunnell settled with Kodak and VWR, Plaintiff had incurred costs totaling \$163,865.25 in connection with her representation of Mr. Gunnell in the Metrocolor Action. Silas Declaration, ¶ 65; Plaintiff's Exhibit 13. Under the Retainer Agreement, which provided that Plaintiff would be reimbursed for costs prior to any distribution to Mr. Gunnell, the aggregate \$40,500 paid by Kodak and VWR was to be applied towards the \$163,865.25 in incurred costs. Nevertheless, Plaintiff issued Mr. Gunnell a \$2,500 check from the VWR settlement funds. Silas Declaration, ¶ 66; Plaintiff's Exhibit 12. The check, which explicitly references VWR, includes an endorsement bearing a signature in Mr. Gunnell's name. Plaintiff's Exhibit 12.

***C. California Labor Code § 3602***

The Metrocolor Action proceeded to trial against Metrocolor. Silas Declaration, ¶ 10. As the Metrocolor Action involved an action brought by employees against an employer, and included claims that the employees were injured during the course of their employment, the plaintiffs' right of recovery would normally be governed by California's Workers' Compensation Act (the "WCA"). California Labor Code §§ 3600 *et al.* However, California sets forth several exceptions to the exclusive remedy provisions of the WCA. The parties' dispute involves two of those exceptions: California Labor Code § 3602(b)(1) and (b)(2).

Pursuant to California Labor Code § 3602(b)(1), the WCA's exclusive remedy provision does not apply "[w]here the employee's injury or death is proximately caused by a *willful physical assault* by the employer" (the "Willful Assault

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT... James Ellis Arden

Chapter 7

Exception") (emphasis added).

Under California Labor Code § 3602(b)(2), the exclusive remedy provision of the WCA does not apply "[w]here the employee's injury is *aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment*, in which case the employer's liability shall be limited to those damages proximately caused by the aggravation" (the "Fraudulent Concealment Exception") (emphasis added).

In the Metrocolor Complaint, Mr. Gunnell alleged that, because the exposure to the toxic chemicals constituted a battery, the Willful Assault Exception applied to Mr. Gunnell's case. Defendant's Exhibit A. Mr. Gunnell also alleged that, because Mr. Gunnell's employers concealed the danger of the chemicals with which Mr. Gunnell worked, thereby aggravating Mr. Gunnell's injuries, the Fraudulent Concealment Exception also applied to except Mr. Gunnell's case from the WCA. *Id.*

***D. The Metrocolor Trial***

Prior to trial, Mr. Gunnell testified in a deposition that, during the Employment Period, Mr. Gunnell did not develop any rashes on his body. Plaintiff's Exhibit 26. Mr. Gunnell also testified that, during that time, he did not have any memory of seeking medical treatment or reporting any injuries to Metrocolor. *Id.*

Shortly before trial, the parties discovered a medical claim form filed by Mr. Gunnell with the Motion Picture Health & Welfare Fund (the "Fund") during the Employment Period (the "Claim Form"), in which Mr. Gunnell stated that he sustained skin irritation and cracking on his hands. Silas Declaration, ¶ 117; Plaintiff's Exhibit 19. In the Claim Form, Mr. Gunnell indicated that *he did not submit his claim to Metrocolor* because he had "a reaction that wasn't extremely unusual." *Id.* In addition, Mr. Gunnell *acknowledged in the Claim Form that his injury was aggravated by his work.* *Id.* Moreover, Mr. Gunnell sought treatment from a non-Metrocolor doctor. Silas Declaration, ¶ 117. The Claim Form, which bears the Fund's name, does not include any mention that the Claim Form was forwarded to



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

Metrocolor. Plaintiff's Exhibit 19.

During Plaintiff's representation of Mr. Gunnell, Mr. Gunnell never stated to Plaintiff, or testified in any proceeding, that Mr. Gunnell reported his chapped hands to Metrocolor or showed his chapped hands to anyone at Metrocolor. Silas Declaration, ¶ 123. The record is similarly devoid of any evidence that Mr. Gunnell reported his chapped hands to Metrocolor during the Employment Period.

Given these facts, the Fraudulent Concealment Exception did not apply to Mr. Gunnell's case: (A) Metrocolor did not have any knowledge of any injury to Mr. Gunnell during the Employment Period; (B) Mr. Gunnell knew about the injury and its connection to his employment; (C) Metrocolor did not conceal medical information from Mr. Gunnell; and (D) there was no evidence of a connection between the chapped hands and the later-manifested cognitive, emotional and respiratory injuries on which Mr. Gunnell's claims were based. Consequently, Plaintiff could not make a valid argument as to the Fraudulent Concealment Exception.

In any case, at the close of evidence, the trial court granted a motion for nonsuit as to all causes of action except for battery. Silas Declaration, ¶ 107. As such, the only cause of action submitted to the jury was battery, and Plaintiff could not make arguments before the jury outside the parameters of Mr. Gunnell's battery cause of action.

Plaintiff did, however, continue to argue that the Willful Assault Exception allowed Mr. Gunnell to pursue his battery claim against Metrocolor. Plaintiff believed that the issue of whether a "willful physical assault" included the act of deceiving an employee into working with potentially dangerous substances was an issue of first impression in California. Silas Declaration, ¶ 106. At the time, Plaintiff had relied on a Ninth Circuit Court of Appeals decision holding that such an act could constitute battery under Oregon law. *Id.*

After trial, a jury entered verdict in favor of Mr. Gunnell on Mr. Gunnell's battery cause of action, awarding Mr. Gunnell \$1,650,000 in general damages and \$5,000,000

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT... James Ellis Arden

Chapter 7

in punitive damages. Silas Declaration, ¶ 10. The award was based on injuries consisting of cognitive injury, anxiety and panic attacks, personality, mood and temper problems and respiratory problems. Plaintiff's Exhibit 62. As to those injuries, Mr. Gunnell alleged that they did not begin to manifest until 1991, after he left Metrocolor. Defendant's Exhibit A. Subsequently, Metrocolor moved for a judgment notwithstanding a verdict on the basis that the Willful Assault Exception did not apply to Mr. Gunnell's case. *Id.* The trial court granted Metrocolor's motion to vacate the verdict (the "JNV Ruling"), finding that Gunnell's case was not factually distinguishable from a California Supreme Court decision, *Johns-Manville Prod. Corp. v. Superior Court*, 27 Cal.3d 465, 469 (1980), and that, pursuant to *Johns-Manville*, the WCA provided the exclusive remedy to Mr. Gunnell. Defendant's Exhibit B [FN4].

Mr. Gunnell appealed the JNV Ruling. Silas Declaration, ¶ 12. The appellate court agreed with the trial court that *Johns-Manville* applied to Mr. Gunnell's case and that the WCA provided the exclusive remedy to Mr. Gunnell. *Gunnell v. Metrocolor Labs., Inc.*, 92 Cal.App.4th 710, 714, 719-20 (Ct. App. 2001). The appellate court also held that the Willful Assault Exception did not exempt Mr. Gunnell from the WCA because Metrocolor did not commit criminal battery involving the use of force or violence against Mr. Gunnell. *Id.*, at 725-28. As such, the appellate court upheld the JNV Ruling, and the California Supreme Court denied review of the appellate opinion. Silas Declaration, ¶¶ 12-13.

***E. The Malpractice Action against Plaintiff***

On December 10, 2002, Mr. Gunnell, *in propria persona*, filed a legal malpractice complaint against Plaintiff and the Law Offices based on Plaintiff's representation of Mr. Gunnell in the Metrocolor Action (the "Malpractice Action"). Plaintiff's Exhibit 1; Silas Declaration, ¶ 13. On June 13, 2003, Mr. Gunnell, *in propria person*, filed a first amended complaint in the Malpractice Action (the "Malpractice FAC"). Plaintiff's Exhibit 2.

In the Malpractice FAC, Mr. Gunnell alleged that Plaintiff "negligently and carelessly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

prepared the [Metrocolor Complaint]... [by] failing to plead all available causes of action, including but not limited to [the Fraudulent Concealment Exception]; failing to advise [Mr. Gunnell] of settlement proposals and offers...; misappropriating settlement funds; [and] failing to properly advise [Mr. Gunnell] during the" Metrocolor trial and subsequent appeal. *Id.* Mr. Gunnell alleged he did not receive the settlement funds he was entitled to receive. *Id.* Mr. Gunnell requested general damages of \$1,650,000 and punitive damages of \$5,000,000. *Id.*

While Mr. Gunnell represented himself, the trial court adjudicated certain motions filed by Plaintiff and the Law Offices, including Plaintiff's law partner, Olivia Bissell. Plaintiff's Exhibit 5. By October 16, 2003, the trial court had ruled on all of the motions filed by the Malpractice Action defendants during Mr. Gunnell's *pro per* representation. *Id.*

*i. Defendant's Substitution into the Malpractice Action*

On October 29, 2003, James Ellis Arden ("Defendant") substituted into the Malpractice Action as Mr. Gunnell's attorney. Plaintiff's Exhibit 3. At the time Defendant substituted into the Malpractice Action, Defendant had over 15 years of experience as an attorney. Silas Declaration, ¶ 30; Plaintiff's Exhibit 23. In his website, Defendant holds himself out as an expert in "attorney ethics, duties and client relations." Plaintiff's Exhibit 24. Defendant also represents that he is a member of the Association of Professional Responsibility Lawyers. *Id.* The website advertises that Defendant offers "[h]elp for clients with lawyer problems, and lawyers with client problems." *Id.* Previously, Defendant has testified that he has been working on legal ethics issues since the beginning of his legal career. April 14, 2011 Deposition Transcript, 78:23-26. According to Defendant, he had worked on a "good number" of malpractice claim cases. Declaration of James Ellis Arden ("Arden Declaration") [doc. 101], ¶ 52.

Despite Defendant's experience in the field of legal ethics, Defendant testified that he did not understand that he certified the pleadings he filed on behalf of Mr. Gunnell. However, Defendant acknowledged that he was familiar with California Code of Civil

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

Procedure ("CCP") § 128.7 at the time he substituted into the Malpractice Action. CCP § 128.7(b) provides, in relevant part:

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar 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, all of the following conditions are met:

- (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (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 establishment of new law.
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Defendant also testified that he believes attorneys have ethical duties to investigate claims before asserting misconduct. Defendant also acknowledged that allegations that an attorney misappropriated funds or did not disclose a settlement to a client are serious accusations against attorneys.

Upon substituting into a case, Defendant's general practice was to review all proceedings and all pleadings filed in the action. Arden Declaration, ¶ 8. As noted

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

above, at the time Defendant substituted into the Malpractice Action, there were no pending motions on the docket. Plaintiff's Exhibit 5; Silas Declaration, ¶¶ 17-18. After Defendant's date of substitution, in October 2003, there was no significant activity related to the Malpractice Action until Mr. Gunnell's deposition in February 2004, discussed below. Plaintiff's Exhibits 5, 7. Nevertheless, according to Defendant, at the time he substituted into the Malpractice Action, Defendant had to master a large amount of material, and Mr. Gunnell needed an attorney "quickly" because of "an unusually large amount of law and motion activity...." Arden Declaration, ¶¶ 6, 10.

**ii. The Misappropriation and Settlement Disclosure Claims**

Defendant read the Malpractice FAC, which was the operative pleading at the time Defendant substituted into the Malpractice Action. As noted above, Mr. Gunnell alleged in the Malpractice FAC that Plaintiff had not disclosed the VWR Agreement to Mr. Gunnell and that Plaintiff misappropriated the VWR settlement funds.

On February 13, 2004, Plaintiff deposed Mr. Gunnell in connection with the Malpractice Action (the "Malpractice Deposition"). Plaintiff's Exhibit 7. Defendant attended the Malpractice Deposition as Mr. Gunnell's attorney. *Id.* During this deposition, Barry Z. Brodsky, Plaintiff's attorney, presented documents that Defendant claimed he had not previously seen. Arden Declaration, ¶ 61. These documents included the settlement checks bearing what appeared to be Mr. Gunnell's signature and the signed VWR Agreement. *Id.* In addition, Defendant obtained a copy of the Retainer Agreement authenticated by Mr. Gunnell. Plaintiff's Exhibit 7, 77:2-17.

At the Malpractice Deposition, Mr. Gunnell testified that Plaintiff never told him about the settlement with VWR and that he did not sign any of the VWR settlement checks, implying that someone forged his signature. Plaintiff's Exhibit 7, 65:4-17, 74:2-76:1. Mr. Gunnell also testified that he never signed the VWR Agreement despite the VWR Agreement including the all-purpose acknowledgment signed by a notary public; in fact, Mr. Gunnell stated that, if a notary was involved, the notary was

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

a fraud. *Id.*, 76:3-20. Mr. Gunnell further testified that any other witnesses who may testify that they observed Mr. Gunnell signing the VWR Agreement would be lying. *Id.*, 114:14-22.

After attending this deposition and observing the documents related to the VWR settlement, Defendant believed Mr. Gunnell's allegations about misappropriation were inaccurate. Plaintiff's Exhibit 17, ¶ 15 ("The documents I saw during [Mr.] Gunnell's deposition suggested his allegations about misappropriation were inaccurate."). According to Defendant, after the Malpractice Deposition, Defendant believed Mr. Gunnell had signed both the VWR Agreement and the VWR Check. As a result, Defendant spoke with Mr. Brodsky and agreed with Mr. Brodsky that the VWR documents would "make it very difficult for [Mr.] Gunnell to prove misappropriation." *Id.*, ¶ 16. According to Defendant, the misappropriation claims were "immaterial" to Mr. Gunnell's malpractice claim. *Id.*

At trial, Defendant testified that: (A) he spoke to Mr. Gunnell about withdrawing the misappropriation claims; (B) Mr. Gunnell agreed that the misappropriation allegations should be withdrawn; and (C) after the Malpractice Deposition, Defendant informed Mr. Brodsky that they would no longer pursue the misappropriation claims. Previously, Defendant had testified that he could not concede the misappropriation claims because it would have been malpractice to agree that Mr. Gunnell did not have a misappropriation claim. April 22, 2011 Transcript, 583:2-18.

On March 23, 2004, Defendant served on Plaintiff's counsel a written statutory settlement demand, requesting \$949,999 from Plaintiff to settle the Malpractice Action. Plaintiff's Exhibit 15. Plaintiff did not accept the settlement offer.

Defendant asserts he did not pursue the misappropriation claim after the Malpractice Deposition. Arden Declaration, ¶ 69. According to Defendant, he believed the "main" violation by Plaintiff was Plaintiff's pleading strategy during the Metrocolor Action, i.e., that Plaintiff did not argue the Fraudulent Concealment Exception before the jury or on appeal. Arden Declaration, ¶ 38. Defendant testified that he "paid little attention to the misappropriation claim." Arden Declaration, ¶ 39. Although Defendant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

acknowledges Plaintiff asserts the misappropriation claim was a "major issue because it concerned her professional license and reputation," Defendant was "focused on the malpractice claim" and "never considered that [the] misappropriation allegations could have affected [Plaintiff's] license or reputation." Arden Declaration, ¶¶ 39-40.

However, on May 12, 2004, approximately three months after Mr. Gunnell's deposition, Defendant, on behalf of Mr. Gunnell, filed a second amended complaint against Plaintiff (the "Malpractice SAC"). Plaintiff's Exhibit 16. The Malpractice SAC included allegations that Plaintiff had "fail[ed] to advise [Mr. Gunnell] of settlement proposals and offers" and had "misappropriate[ed] settlement funds." *Id.*, ¶ 9.

The Malpractice SAC included a request for punitive damages that the trial court had previously stricken. Given the trial court's ruling, Plaintiff demanded that Defendant remove the language from the Malpractice SAC. As a result, on June 3, 2004, Defendant signed a stipulation to strike the request for punitive damages from the Malpractice SAC (the "Stipulation to Strike"). Plaintiff's Exhibit 18

Defendant has offered various explanations regarding why he did not delete the misappropriation allegations from the Malpractice SAC. In his trial declaration, Defendant testified that, because the trial court had previously overruled Plaintiff's demurrer of the Malpractice FAC, Defendant did not want to change any allegations against Plaintiff, in case Plaintiff decided to file another demurrer. Arden Declaration, ¶ 47. According to Defendant, had he deleted the misappropriation allegations, Plaintiff would have filed another demurrer. Arden Declaration, ¶ 70. However, at trial, Defendant testified that he "didn't think about" the misappropriation allegations when he filed the Malpractice SAC and that he "wished he had" removed the allegations to avoid the current litigation. According to Defendant, failing to remove the allegations "was a mistake."

Defendant also represented that he did not know of any procedure to withdraw allegations from a complaint. As such, Defendant contends he believed his alleged conversation with Mr. Brodsky was sufficient to inform Plaintiff that Defendant

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

---

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

would not be pursuing the misappropriation and settlement conduct claims, despite the inclusion of misappropriation allegations in the Malpractice SAC.

On July 9, 2004, Plaintiff filed a motion for summary judgment in the Malpractice Action (the "Malpractice MSJ"). Plaintiff's Exhibit 29. In the Malpractice MSJ, Plaintiff asserted that Mr. Gunnell's claim of misappropriation was meritless and frivolous, and that Plaintiff's presentation of notarized documents defeated any allegations that Plaintiff entered into an unauthorized settlement or misappropriated funds. *Id.* Plaintiff attached a declaration from the notary who signed the VWR Agreement. *Id.* Plaintiff also attached a declaration in which Plaintiff testified that she was "outraged" over Mr. Gunnell's and Defendant's repeated assertion that Plaintiff had misappropriated funds or failed to obtain Mr. Gunnell's consent to settle with VWR. Plaintiff's Exhibit 29, p. 39.

On July 29, 2004, after Plaintiff filed the Malpractice MSJ, Defendant, on behalf of Mr. Gunnell, filed a third amended complaint in the Malpractice Action (the "Malpractice TAC"). Plaintiff's Exhibit 25. Once again, the pleading included allegations that Plaintiff failed to advise Mr. Gunnell of settlement proposals and that Plaintiff misappropriated settlement funds. *Id.*, ¶ 9.

On September 10, 2004, Defendant, on behalf of Mr. Gunnell, filed an opposition to the Malpractice MSJ (the "Opposition to Malpractice MSJ"). Plaintiff's Exhibit 19. Defendant signed the Opposition to Malpractice MSJ. *Id.* In the Opposition to Malpractice MSJ, Defendant made several arguments regarding the misappropriation and settlement claims:

That defendants' breaches of those duties caused [Mr. Gunnell] significant damage is set forth in Paragraphs 11 and 12 of the complaint: "Had Defendants exercised proper care and skill... [Mr. Gunnell] *would have received the settlement proceeds he was entitled to receive....*"

...



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

As proof that [Mr. Gunnell] validly authorized a settlement between himself... and [VWR], defendants offer a declaration from Alexander D. Mack, who claims he remembers witnessing [Mr. Gunnell] sign a settlement release and who attaches copies of identical acknowledgment for each of the four individuals, all dated February 26, 1999. None of the acknowledgments reflect the notary's personal knowledge of any signer, and the Description of Attached Document section of each acknowledgment is blank.

Conspicuously absent is any proper proof of defendants' supposed facts. The notary's declaration, and the photocopies attached thereto, have no probative value.

Plaintiff's Exhibit 19 (emphasis added). Defendant also included a declaration by Mr. Gunnell in support of the Opposition to Malpractice MSJ, in which Mr. Gunnell stated that Plaintiff never obtained Mr. Gunnell's consent to enter into the VWR Agreement. *Id.* Moreover, in evidentiary objections to the evidence offered by Plaintiff in the Malpractice MSJ, Defendant objected to the declaration of the notary public who notarized the VWR Agreement. Plaintiff's Exhibit 21.

Prior to the Opposition to Malpractice MSJ, Defendant had never asserted that the misappropriation and settlement conduct claims were based on a lack of informed written consent. In fact, as noted above, Mr. Gunnell's testimony from the Malpractice Deposition indicated that the claims were based on forgery of settlement documents and misappropriation of funds. For the first time during course of the Malpractice Action, Defendant argued that Plaintiff misappropriated funds and failed to disclose the VWR Agreement because Plaintiff represented multiple plaintiffs in the Metrocolor Action and allegedly did not obtain each client's informed written consent prior to settlement. Plaintiff's Exhibit 19.

However, Defendant also included, in a separate section, his arguments regarding purported issues with the notary public's acknowledgment attached to the VWR Agreement. *Id.* According to Defendant, the all-purpose acknowledgment signed by

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT... James Ellis Arden

Chapter 7

the notary public and attached to the VWR Agreement was insufficient to prove that Defendant had signed the VWR Agreement. *Id.*

Defendant also filed a separate statement of facts in opposition to the Malpractice MSJ (the "Malpractice Opposed Facts"). Plaintiff's Exhibit 20. In the Malpractice Opposed Facts, Defendant, on behalf of Mr. Gunnell, disputed the following statements:

Plaintiff's Statement of Fact	Mr. Gunnell's Response
[Mr.] Gunnell approved the settlement and release of [VWR] and signed the release in front of a notary public.	Disputed. [Plaintiff] did not obtain [Mr. Gunnell's] informed or written consent to the settlement and release of [VWR], <i>nor did he sign the release as alleged; [Plaintiff's] claimed evidence of [Mr. Gunnell's] signing is not competent.</i>
[Plaintiff] did not misappropriate any of the [VWR] settlement proceeds. Pursuant to the retainer agreement between [Mr. Gunnell] and [Plaintiff], the settlement funds were properly applied to outstanding costs.	Disputed. [Plaintiff] did not obtain [Mr. Gunnell's] informed or written consent to the settlement and release of [VWR], nor did [Plaintiff] obtain his informed written consent to keep his funds as payment of costs without ever delivering the same to him. The fee agreement does not provide that [Plaintiff] could pay [herself] out of monies received for [Mr. Gunnell's] benefit; nor could it.

*Id.* (emphasis added).

In her statement of facts, Plaintiff had stated that she advised Mr. Gunnell of all settlement offers and did not take any action with respect to those settlement offers without Mr. Gunnell's knowledge and consent. *Id.* In response, Defendant stated: "Disputed, as to [Plaintiff's] failure to obtain [Mr. Gunnell's] informed and written consent. Not having obtained [Mr. Gunnell's] informed written consent, [Plaintiff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

has] no such proof." *Id.*

Defendant again offered multiple explanations regarding why he opposed Plaintiff's request for summary judgment on the misappropriation claims, although he acknowledged that the claims were undermined by the evidence. First, Defendant testified that he "did not argue [that Plaintiff] had misappropriated monies or acted improperly in connection with the settlement" and that, by the time Defendant prepared the Opposition to Malpractice MSJ, the misappropriation issue was a "dead issue." Arden Declaration, ¶ 81. Alternatively, Defendant testified that he only raised the misappropriation issues in the Opposition to Malpractice MSJ because Plaintiff raised the issue first when she requested summary judgment in her favor on those claims. According to Defendant, he had dropped the misappropriation and settlement misconduct claims, but Plaintiff revived those claims by filing the Malpractice MSJ. According to Defendant, he was now arguing that Plaintiff had failed to provide Mr. Gunnell informed written consent.

However, the Opposition to Malpractice MSJ included the argument that the notarization was invalid. Moreover, the Malpractice Opposed Facts included the assertions that Mr. Gunnell did not sign the release, and that Plaintiff's "claimed evidence of [Mr. Gunnell's] signing is not competent." Plaintiff's Exhibit 19.

Defendant also testified that he did not really argue misappropriation or settlement misconduct because his objections to the Malpractice MSJ were "evidentiary in nature." Arden Declaration, ¶ 81. Next, Defendant characterized his arguments regarding misappropriation and settlement misconduct as "minor" and "unimportant surplusage," which Defendant did not focus on and did not intend to pursue. Arden Declaration, ¶¶ 43, 68-69.

However, Defendant had previously testified that he would have breached a fiduciary duty to Mr. Gunnell if he did not oppose Plaintiff's arguments regarding misappropriation and settlement misconduct. April 22, 2011 Transcript ("April 22 Transcript"), 583:2-18. Defendant then testified that "you can't concede anything to the other side." *Id.* In addition, Defendant had previously testified that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

misappropriation and ethical misconduct allegations were serious, and that attorneys pursuing such claims should investigate the allegations. January 14, 2011 Deposition Transcript, 17:4-19:5.

Defendant knew that the misappropriation claim "was probably incorrect." Arden Declaration, ¶¶ 40, 42. Between the Malpractice Deposition and September 10, 2004, when Defendant filed the Opposition to Malpractice MSJ, Defendant did not attempt to depose any of the witnesses who observed Mr. Gunnell sign the VWR documents, and did not attempt to depose the notary public who signed the all-purpose acknowledgment attached to the VWR Agreement. Silas Declaration, ¶ 78. Defendant also did not attempt to depose Plaintiff prior to filing the Opposition to Malpractice MSJ. *Id.*

***iii. The Fraudulent Concealment Exception Allegations***

In the Malpractice Action, Mr. Gunnell also contended that Plaintiff committed malpractice by failing to argue the Fraudulent Concealment Exception before the jury or during the Metrocolor appeal. As noted above, to prove that the Fraudulent Concealment Exception applies, an employee must show that "the employee's injury is aggravated *by the employer's fraudulent concealment of the existence of the injury* and its connection with the employment...." California Labor Code § 3602(b)(2) (emphasis added). Under the Fraudulent Concealment Exception, "the employer's liability [is] limited to those damages proximately caused by the aggravation." *Id.*

In the Malpractice SAC and Malpractice TAC, both of which Defendant filed on behalf of Mr. Gunnell, Mr. Gunnell alleged that Plaintiff committed malpractice by failing to plead "all available causes of action," including the Fraudulent Concealment Exception. Plaintiff's Exhibits 16, 25. According to Defendant, Plaintiff committed malpractice by failing to argue a theory that was alleged in the Metrocolor Complaint; Defendant contends that Plaintiff had a duty to argue every exception included in the Metrocolor Complaint. Arden Declaration, ¶ 30; Plaintiff's Exhibit 19.

According to Defendant, Plaintiff could have made a case for application of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

Fraudulent Concealment Exception. Defendant based this argument in part on the Claim Form. Plaintiff's Exhibit 19. Prior to the Malpractice Deposition, which took place in February 2004, Mr. Gunnell showed Defendant the Claim Form. Arden Declaration, ¶ 48. Without having any evidence that Mr. Gunnell suffered internal organ damage during the Employment Period, Defendant testified that he believed the Claim Form demonstrated that Mr. Gunnell's hand chapping was a symptom of internal organ poisoning, and that Mr. Gunnell's employer knew about the poisoning because the employer had taken steps to keep Mr. Gunnell from seeing warning labels related to the cleaning substance. Arden Declaration, ¶ 50.

As noted above, the Claim Form was not filed with Metrocolor, and there is nothing in the Claim Form indicating that Mr. Gunnell informed Metrocolor about his chapped hands. In addition, the Claim Form reflected that Mr. Gunnell knew his chapped hands were caused and aggravated by his work with the cleaning substance.

During the Malpractice Deposition, Mr. Gunnell testified, in Defendant's presence, that he did not have any illnesses in 1989, the year that Mr. Gunnell worked at Metrocolor. Plaintiff's Exhibit 6, 87:2-8. Mr. Gunnell also testified that, during his employment, he sought medical treatment for his chapped hands. *Id.*, 90:24-91:18. Mr. Gunnell did not seek medical treatment from Metrocolor; according to Mr. Gunnell, his health insurance was through his union. *Id.*, 80:17-21. As in the Metrocolor Action, Mr. Gunnell testified that, at the time he experienced the hand chapping, he believed the cleaning substance he used in connection with his employment was to blame. *Id.*, 92:3-17.

At the Malpractice Deposition, Mr. Gunnell testified *for the first time* that he reported his chapped hands to a supervisor during his employment with Metrocolor. *Id.*, 99:10-20. According to Mr. Gunnell, he subsequently asked a supervisor to identify the cleaning substance, and the supervisor identified the substance as "TSP." *Id.*, 92:18-94:13; 99:21-100:1.

Despite the new testimony, Mr. Gunnell testified, as he had done during the Metrocolor Action, that he did not seek medical care from Metrocolor during the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

Employment Period and did not have a physical exam during his time with Metrocolor. Plaintiff's Exhibit 6, 121:1-11; 129:22-130:5. In addition, Mr. Gunnell acknowledged that he never sent any medical records related to his chapped hands to Metrocolor. *Id.*, 130:6-12. In any event, Mr. Gunnell testified that the doctor prescribed a cream for the chapping, and eventually the chapping "got better." 100:25-101:1; 105:17-19.

Defendant acknowledged that, during Plaintiff's representation of Mr. Gunnell, Mr. Gunnell never testified that he reported any symptoms to Metrocolor and that nothing in the record from the Metrocolor Action showed that Mr. Gunnell reported an injury to his supervisor. Defendant also acknowledged that the first time Mr. Gunnell testified that he showed his supervisor his chapped hands was during the Malpractice Action, which Mr. Gunnell initiated after the conclusion of the Metrocolor appeal.

Plaintiff testified that she could not pursue the Fraudulent Concealment Exception because Mr. Gunnell's sworn testimony from the Metrocolor Action established that: (A) the employer did not have any knowledge of any actual injury to Mr. Gunnell during his employment; (B) as to his chapped hands, which was the only injury about which Mr. Gunnell was aware during his employment, Mr. Gunnell was aware of the injury's connection to his employment; (C) the employer did not conceal any medical information from Mr. Gunnell; and (D) there was no evidence of any connection between Mr. Gunnell's chapped hands and the later-manifested alleged cognitive, emotional and respiratory injuries on which the Metrocolor Complaint and the jury verdict were based. Silas Declaration, ¶ 122. Because the injuries that formed the basis of the Metrocolor Complaint did not manifest until 1991, years after Mr. Gunnell left his employment, Plaintiff testified she could not have argued that Metrocolor concealed the as-yet-nonexistent injuries from Mr. Gunnell.

Notwithstanding Mr. Gunnell's deposition testimony, Defendant continued to argue that Plaintiff should have pursued the Fraudulent Concealment Exception. After the Malpractice Deposition, Defendant filed two amended complaints and opposed the Malpractice MSJ. In all of those filings, Defendant insisted that Plaintiff should have argued the Fraudulent Concealment Exception. The trial court set a discovery cutoff

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

date of October 18, 2004 and a trial date of November 16, 2004. Despite those scheduled events, Defendant did not attempt to obtain discovery validating his theory.

During the 11 months before the hearing on the Malpractice MSJ, Defendant did not attempt to depose Plaintiff. Defendant also did not attempt to obtain discovery about whether Mr. Gunnell was injured during his employment with Metrocolor; for instance, Defendant did not contact any of Mr. Gunnell's treating physicians, did not talk to any of the experts retained during the Metrocolor Action and did not consult the trial transcripts.

In the Malpractice MSJ, Plaintiff cited several cases regarding the Fraudulent Concealment Exception. Plaintiff's Exhibit 29. For instance, citing *Jensen v. Amgen Inc.*, 105 Cal.App.4th 1322, 1326 (Ct. App. 2003), Plaintiff quoted the following language:

Summary judgment was properly granted in this case because Amgen did not conceal the existence of Jensen's injury. Jensen herself knew of her symptoms before anyone at Amgen did. "It is not enough ... to rely on evidence from which a trier of fact might conclude [that the employer] should have known of [the employee's] injuries before they were reported; only evidence of actual knowledge would raise an issue of fact precluding the grant of summary judgment."

Plaintiff's Exhibit 29, p. 20. Citing *Hughes Aircraft Co. v. Superior Court*, 44 Cal.App.4th 1790, 1795-97 (Ct. App. 1996), Plaintiff also quoted the following:

Section 3602, subdivision (b)(2) does not impose liability on an employer for injuries resulting from either the failure to provide a safe work environment or from failure to warn of unsafe premises. (See § 4553.) Hughes's alleged prior knowledge of the safety of its workplace is insufficient by itself to establish liability. The statute permits an employee to recover damages for aggravation to work-related injuries only when the employer *has concealed both the existence of the injury*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

*and its work relationship.* Section 3602, subdivision (b)(2) is inapt here because there is no evidence to support a finding Hughes knew about the injuries before being told by plaintiffs.

...

Applying the above principles to our facts, we conclude the trial court erred in denying the motion for summary judgment. Contrary to the court's statement, Hughes's prior knowledge of its unsafe work environment and the potential risks to its employees, even if it could be proven, would be insufficient to establish section 3602, subdivision (b) (2) liability. The first consideration is whether there are triable issues of fact concerning Hughes's *actual prior knowledge of plaintiffs' injuries*. Only if the answer is yes would the court consider whether the employer concealed those injuries and their relationship to the work environment from plaintiffs. It is not enough for plaintiffs to rely on evidence from which a trier of fact might conclude Hughes should have known of plaintiffs' injuries before they were reported; only evidence of actual knowledge would raise an issue of fact precluding the grant of summary judgment. Because the plaintiffs failed to establish any triable issues regarding Hughes's actual prior knowledge of their injuries, the trial court had no choice but to grant the summary judgment motion.

Plaintiff's Exhibit 29, pp. 21-22 (emphasis in *Hughes*). Citing *Ashdown v. Ameron Internat. Corp.*, 83 Cal.App.4th 868, 880 (Ct. App. 2000), Plaintiff quoted:

An employer's actual knowledge of the existence of an employee's injury connected with the employment is a necessary prerequisite to establishing a claim against the employer for fraudulent concealment under section 3602, subdivision (b)(2). Clearly, an employer cannot be charged with concealing something of which it has no knowledge. In addition, the injured employee or his or her representatives must



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

present evidence showing that the employer actively prevented the employee from receiving treatment for his or her employment-related injury or disease, or otherwise "aggravated" the injury or disease in some way.

Plaintiff's Exhibit 29, p. 22.

Defendant did not address any of these authorities in the Opposition to Malpractice MSJ. Plaintiff's Exhibit 19. Nevertheless, Defendant continued to assert that the Fraudulent Concealment Exception could have applied. *Id.* Defendant asserted that Mr. Gunnell sought medical treatment while he was employed by Metrocolor, and that Metrocolor concealed the dangers of the cleaning substance with which Mr. Gunnell worked. *Id.* However, Defendant did not provide any evidence that Plaintiff knew, during the Malpractice Action, that Mr. Gunnell reported any injuries to Metrocolor during the Employment Period. *Id.* Moreover, Defendant did not address the fact that Mr. Gunnell acknowledged in the Claim Form that his chapped hands, the only reported injury suffered by Mr. Gunnell during the Employment Period, were caused by his work at Metrocolor. *Id.*

***iv. The Malpractice Judgment and Appeal***

On September 23, 2004, the trial court held a hearing on the Malpractice MSJ. Plaintiff's Exhibit 32. At the hearing, Defendant again asserted that the Fraudulent Concealment Exception applied to Mr. Gunnell's case. *Id.*, p. 9. As to misappropriation and settlement conduct, Defendant again argued that the notary's declaration was "incompetent evidence." *Id.*, p. 13.

Eventually, the trial court entered an order granting the Malpractice MSJ (the "Malpractice Order"). Plaintiff's Exhibit 33. In the Malpractice Order, the trial court found:

[Mr. Gunnell] fails to establish that his employer had actual knowledge of his initial injury, i.e. chapped hands, as it was [Mr. Gunnell] who reported his chapped hands to his employer. [Mr. Gunnell] fails to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

submit any admissible evidence that [Mr. Gunnell] has liver, brain, kidney, respiratory tract or central nervous system damage, and [Mr. Gunnell's] expert found that no such damage exists. [Mr. Gunnell] in his deposition states that his initial injury was his chapped hands, and he knew his chapped hands were caused by the cleaning solution he was using at work.

Further, as to [Mr. Gunnell's] alleged brain damage, there is no evidence and no conceivable way that [Mr. Gunnell's] employer could have been apprised of this damage. [Mr. Gunnell] has failed to submit any evidence of the employer's actual knowledge as required by Labor Code section 3602(b)(2) and thus, summary judgment is proper.

There is no triable issue of material fact as to any other allegation of malpractice set forth in the complaint. [Mr. Gunnell] endorsed the settlement check in front of a notary and turned the check over to Defendants. [Mr. Gunnell] has not submitted any evidence to establish that (1) Defendants were not entitled to the settlement funds or, (2) that Defendants failed to obtain [Mr. Gunnell's] informed consent under California Rules of Professional Conduct 3-310 and 4-100.

Malpractice Order, ¶¶ 3-5.

Four days after the hearing on the Malpractice MSJ, both parties' expert designations were due. Silas Declaration, ¶ 142. The discovery cutoff was in 25 days, and trial was in 54 days. *Id.* Nevertheless, Defendant had not retained or spoken to any medical or chemical experts. April 18, 2011 Transcript, 193:8-194:11. Defendant did not speak to any of Mr. Gunnell's physicians; there was no evidence showing Mr. Gunnell sustained "internal injuries" or that he sustained an initial injury concealed by Metrocolor, and aggravated by that alleged concealment. Silas Declaration, ¶ 146-47; April 18, 2011 Transcript, 194:12-195:19. Defendant had not spoken to any witnesses, other than Mr. Gunnell, had not taken any depositions and had not done any investigation of the case, or begun preparing for trial, including reading the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

underlying transcripts. January 14, 2011 Transcript, 113:3-21; April 18, 2011 Transcript, 194:12-195:19; Arden Declaration, ¶ 21.

Defendant appealed the Malpractice Judgment. Arden Declaration, ¶ 83. Although Defendant appears to have abandoned the misappropriation and settlement arguments, Defendant continued to assert that Plaintiff committed by malpractice by failing to argue the Fraudulent Concealment Exception. On January 27, 2006, the appellate court issued a decision affirming the Malpractice Order (the "Malpractice Appellate Opinion"). *Gunnell v. Silas*, 2006 WL 204610 (Ct. App. Jan. 27, 2016). In the Malpractice Appellate Opinion, the appellate court stressed that the Fraudulent Concealment Exception "applies when an employer conceals from an employee a work-related *injury*." *Id.*, at \*2 (emphasis in the Malpractice Appellate Opinion). The appellate court found:

Appellant contends the trial court's analysis here rejecting fraudulent concealment overemphasized his awareness of the cleaning solvent having irritated his hands, while ignoring his ignorance of his more significant internal injuries. ... We note, however, that even if appellant's initial injury was internal, the fraudulent concealment exception applies only if Metrocolor actually knew, instead of merely should have known, about those injuries and concealed them from him. Appellant presents no evidence Metrocolor actually knew of his internal injuries, let alone concealed them from him.

Appellant contends respondents' hearsay and personal opinion was the only evidence they offered that fraudulent concealment did not apply. Arguing respondents' personal views did not settle the matter, he asserts respondents' reason for abandoning fraudulent concealment was a triable issue. Appellant cites no authority, however, that respondents' subjective reasons for abandoning the theory were relevant. Pretrial discovery can uncover facts that undercut a legal theory. The most reasonable inference from the late-discovered insurance forms tying the cleaning solution to appellant's skin problems is that respondents jettisoned the fraudulent concealment theory because the facts did not support it. Indeed, continuing to pursue a claim after a party discovers

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

facts defeating the claim can constitute malicious prosecution. But regardless of respondents' subjective reasons for not pursuing fraudulent concealment at trial, appellant's malpractice claim against respondents fails the objective principle of proving a case-within-a-case.

*Id.*, at \*3 (internal citations omitted). In light of the above, the appellate court affirmed the trial court's holding that Plaintiff did not commit malpractice when she did not argue the Fraudulent Concealment Exception.

***F. The Malicious Prosecution Action***

On January 15, 2008, Plaintiff filed a complaint against Defendant, asserting claims for malicious prosecution and abuse of process (the "Malicious Prosecution Action"). Plaintiff's Exhibit 35. In April 2011, the state court held trial in the Malicious Prosecution Action before a jury. Plaintiff's Exhibit 41. On June 13, 2011, the state court entered a judgment in favor of Plaintiff based on the jury's verdict (the "Malicious Prosecution Judgment"). *Id.* The jury awarded Plaintiff a total of \$300,756.79 in damages with interest thereon at a rate of 10% per annum. *Id.*

Defendant appealed the Malicious Prosecution Judgment. *Silas v. Arden*, 213 Cal.App.4th 75 (Ct. App. 2012). The appellate court affirmed the Malicious Prosecution Judgment, holding that Defendant asserted the Fraudulent Concealment Exception despite knowing that Mr. Gunnell was aware of his condition and its cause, and Mr. Gunnell had never informed Plaintiff during the Metrocolor Action that Mr. Gunnell spoke to a supervisor about his condition [FN5]. *Id.*, at 91-92. As to misappropriation, the appellate court found that Defendant continued to prosecute the misappropriation claim by including it in Mr. Gunnell's amended complaints after being confronted with documents that defeated the claim. *Id.*

***G. Defendant's Bankruptcy Case and the Adversary Proceeding***

On June 7, 2013, Defendant filed a voluntary chapter 7 petition. On July 12, 2013, Plaintiff filed a complaint against Defendant, requesting, among other things,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden**

**Chapter 7**

nondischargeability of the debt owed to her under 11 U.S.C. § 523(a)(6).

On September 27, 2013, Plaintiff filed a motion for summary judgment (the "MSJ") [doc. 12], asserting that the Malicious Prosecution Judgment and the Malicious Prosecution Appellate Opinion established a claim under § 523(a)(6). This Court agreed; on April 4, 2014, the Court entered an order granting the MSJ and a judgment in favor of Plaintiff (the "Judgment") [docs. 40, 41].

Defendant appealed the Judgment to the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On July 2, 2015, the BAP issues its opinion (the "BAP Opinion"). *In re Arden*, 2015 WL 4068962 (B.A.P. 9th Cir. Jul. 2, 2015). In relevant part, the BAP found:

Comparing the elements of the California intentional tort of malicious prosecution with the requirements to establish a willful and malicious injury excepted from the debtor's discharge under § 523(a)(6), *we have no quarrel with the bankruptcy court's conclusion that the "malicious" element was established*, but although we acknowledge that it is a very close question, we disagree that the "willful" standard was necessarily met. We thus conclude that the bankruptcy court erred in granting summary judgment in Ms. Silas' favor based on the issue preclusive effects of the state court judgment *with respect to the § 523(a)(6) "willful injury" element*.

*Id.*, at \*10 (emphasis added). As to "willfulness," the BAP held that the jury instructions and verdict did not establish willful conduct:

The state court judgment did not necessarily include findings of willfulness within the meaning of § 523(a)(6). The instructions to the jury did not ask specifically that the jury find that the debtor continued the legal malpractice action against Ms. Silas with a subjective intent to harm her. Rather, the jury instructions asked the jury to determine whether the debtor "acted primarily for a purpose other than succeeding on the merits of the claim." The additional jury instructions did not require the jury to specify this purpose. Moreover, the verdict form merely repeated this instruction in the form of a question, to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

which the jury answered "yes."

*Id.*, at \*11. As such, the BAP vacated and remanded the Judgment. *Id.*, at \*12.

Plaintiff appealed the BAP Opinion to the Ninth Circuit Court of Appeals. *In re Arden*, 693 F. App'x 596 (9th Cir. 2017). The Court of Appeals noted that the BAP vacated the Judgment "and remand[ed] the case to the bankruptcy court *to determine whether [Defendant's] malicious prosecution of [Plaintiff] was "willful" for 11 U.S.C. § 523(a)(6) purposes.*" *Id.*, at 597 (emphasis added). However, the Court of Appeals held that, in light of its recent decision in *In re Gugliuzza*, 852 F.3d 884 (9th Cir. 2017), the Court of Appeals did not have jurisdiction over the appeal because the BAP Opinion "left the ultimate question of whether the judgment debt is nondischargeable open and unresolved." *Id.*

Upon remand, the parties filed a joint pretrial stipulation (the "JPS") [doc. 90]. On February 9, 2018, the Court entered an order approving the JPS (the "Pretrial Order") [doc. 96]. In the Pretrial Order, the Court stated that "the Court will not try the issue of whether [Defendant] acted 'maliciously' under 11 U.S.C. § 523(a)(6), as that element of 11 U.S.C. § 523(a)(6) was preclusively determined prepetition." Pretrial Order, p. 2. The Court also instructed the parties to file declarations in lieu of direct testimony. Pretrial Order, p. 3.

On April 3, 2018, Plaintiff filed the Silas Declaration [doc. 98]. On April 10, 2018, Defendant filed the Arden Declaration [doc. 101]. The parties filed evidentiary objections to the declarations, and the Court issued rulings on the evidentiary objections at trial [docs. 119, 120]. From May 23, 2018 to May 25, 2018, and on July 30, 2018, the Court held trial on this matter.

After trial, the Court instructed the parties to file post-trial briefs summarizing the evidence and setting forth their arguments. The parties timely filed their post-trial briefs [docs. 130, 134, 135].

## **II. ANALYSIS**

### ***A. Burden of Proof***

The plaintiff's burden of proof in a nondischargeability action under 11 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

---

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

523(a) is "the ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994), *aff'd sub nom. In re Arnold & Baker Farms*, 85 F.3d 1415 (9th Cir. 1996) (citing *In re Winship*, 397 U.S. 358, 371, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970)).

***B. 11 U.S.C. § 523(a)(6)***

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

***C. The BAP's Mandate***

As noted above, in the BAP Opinion, the BAP agreed that the Malicious Prosecution Judgment established the element of "maliciousness" under § 523(a)(6). The BAP remanded this matter for the Court to determine only the "willful" element under § 523(a)(6). Nevertheless, Defendant asserts that this Court must adjudicate both elements of § 523(a)(6).

"Under the 'rule of mandate,' the trial court must adhere to the appellate court's decision." *In re de Jong*, 588 B.R. 879, 899 (B.A.P. 9th Cir. 2018) (citing *Stacy v. Colvin*, 825 F.3d 563, 567-68 (9th Cir. 2016)). "The rule of mandate is similar to, but broader than, the law of the case doctrine. The rule provides that any district court that has received the mandate of an appellate court cannot vary or examine that mandate for any purpose other than executing it." *Stacy*, 825 F.3d at 567-68 (internal citations and quotations omitted). The trial court "commits jurisdictional error if it takes actions that contradict the mandate." *Id.*, at 568 (internal citations and quotations omitted).

Similar to the rule of mandate, "[t]he law of the case doctrine generally prohibits a court from considering an issue that has already been decided by that same court or a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

higher court in the same case." *Stacy*, 825 F.3d at 567. "The doctrine is concerned primarily with efficiency, and should not be applied when the evidence on remand is substantially different, when the controlling law has changed, or when applying the doctrine would be unjust." *Id.* "Because the doctrine is designed to prevent relitigation of issues that already have been decided, the burden lies with the party opposed to the application of the doctrine to demonstrate a substantial difference in the evidence, a change in controlling law, or that application of the doctrine is unjust." *In re Charleston Assocs., LLC*, 2018 WL 4006298, at \*11 (Bankr. D. Nev. Jul. 24, 2018). "A district court's discretionary decision to apply the law of the case doctrine is reviewed for abuse of discretion." *Stacy*, 825 F.3d at 567.

Here, the BAP agreed that the Malicious Prosecution Judgment satisfied the element of "maliciousness" under § 523(a)(6). In the BAP Opinion, the BAP remanded this matter for the Court to make findings regarding whether Defendant's conduct was "willful." The Court of Appeals agreed, noting that the BAP vacated the Judgment "and remand[ed] the case to the bankruptcy court to determine whether [Defendant's] malicious prosecution of [Plaintiff] was "willful" for 11 U.S.C. § 523(a)(6) purposes." *Arden*, 693 F. App'x at 597 (emphasis added).

Even if the mandate is not clear, however, the law of the case doctrine provides that, unless there is new evidence, the controlling law has changed or applying the doctrine would be unjust, this Court may not reconsider the issue of whether the Malicious Prosecution Judgment established the element of maliciousness. Defendant has not presented any new evidence that would change the analysis, there is no new controlling law and applying the doctrine is not unjust in this case. The issue of maliciousness was assessed by the BAP, and the BAP held that they "have no quarrel with [this Court's] conclusion that the 'malicious' element was established." *Arden*, 2015 WL 4068962 at \* 10. As such, the law of the case doctrine applies to the element of maliciousness.

Under both the rule of mandate and the law of the case doctrine, this Court does not have the power to reconsider the "maliciousness" issue upon remand. Even if the Court did have the power to reconsider the issue, however, the Court would again find



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

that the Malicious Prosecution Judgment established the element of maliciousness, for the reasons set forth in the Judgment.

***D. Willfulness***

The BAP set forth the applicable legal standard in the BAP Opinion:

Section 523(a)(6) excepts from discharge debts arising from a debtor's willful and malicious injury to another person. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008). We must analyze the willful and malice requirements separately, *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (2002), and we must determine that both have been met, *Ormsby v. First Am. Title Co. of Nev. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010).

"A 'willful' injury is a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Barboza*, 545 F.3d at 706, quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). To satisfy the willfulness requirement, it must be shown that the debtor either had "a subjective intent to harm or a subjective belief that harm is substantially certain." *Su*, 290 F.3d at 1144. When determining the debtor's intent under § 523(a)(6), there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby*, 591 F.3d at 1206.

*Arden*, 2015 WL 4068962, at \*8. "In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action." *Su*, 290 F.3d at 1146.

For example, in *Ormsby*, the Ninth Circuit Court of Appeals held there was "willful" conduct where the debtor "was necessarily aware that his use of [the plaintiff's trade secrets] without paying for them had an economic value." *Ormsby*, 591 F.3d at 1207. Moreover, in *In re Jercich*, 238 F.3d 1202 (9th Cir. 2001), the Ninth Circuit Court of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

Appeals held that the "willfulness" requirement of § 523(a)(6) was satisfied where there were findings that the debtor "knew he owed the wages to [the plaintiff] and that injury to [the plaintiff] was substantially certain to occur if the wages were not paid... yet chose not to pay and instead used the money for his own personal benefit."

*Jercich*, 238 F.3d at 1208-09.

Here, Plaintiff has established, by a preponderance of the evidence, that Defendant's conduct was willful, i.e., that Defendant had a subjective intent to harm Plaintiff or, at the least, a subjective belief that harm to Plaintiff was substantially certain. As noted by the Ninth Circuit Court of Appeals, Defendant is charged with the knowledge of the natural consequences of his actions. *Ormsby*, 591 F.3d at 1206.

Defendant prosecuted the Malpractice Action on grounds Defendant knew were patently meritless and tried to keep the Malpractice Action alive long enough to leverage Plaintiff to make a settlement offer. Defendant knew that, during the Malpractice Action, Plaintiff did not have any evidence that Mr. Gunnell reported any injuries to Metrocolor during the Employment Period. Because of the Claim Form, Defendant also knew that Mr. Gunnell was aware his chapped hands were caused by his work at Metrocolor. As such, Defendant knew that the Fraudulent Concealment Exception could not have applied to Mr. Gunnell's case.

Moreover, Defendant could not have believed that he could try a case involving the existence, aggravation and causation of an injury without a single medical witness or expert. Defendant also could not have believed that he could introduce into evidence and rely on Mr. Gunnell's new testimony regarding reporting his alleged injury to a supervisor at Metrocolor. Mr. Gunnell admitted Plaintiff was unaware of that alleged conversation during her representation of Mr. Gunnell.

In addition to the baseless arguments regarding the Fraudulent Concealment Exception, the evidence establishes that Defendant kept the misappropriation allegations in the suit because the presence of those serious allegations of misconduct would make it more likely that Plaintiff, if the Malpractice MSJ on those allegations were denied, might settle with Mr. Gunnell to avoid the embarrassment and risk of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

Mr. Gunnell testifying in open court to a jury that Plaintiff had concealed a settlement and stolen the proceeds. Those allegations put more leverage and pressure on Plaintiff to want to avoid trial.

Defendant's explanations regarding why he failed to dismiss the misappropriation allegations are not credible. Defendant declared that he did not care about the misappropriation allegations, because they purportedly did not involve enough money to bother litigating. If this was true, why did Defendant not delete the two lines of misappropriation allegations from the pleadings, or state in the Opposition to Malpractice MSJ that Mr. Gunnell was not pursuing those allegations? Contrary to this testimony, Defendant also represented that he worried Plaintiff may file a demurrer if he removed the allegations and that, despite having previously signed the Stipulation to Strike, Defendant did not know how to remove allegations from a pleading.

The Court also does not find Defendant's testimony regarding his decision to oppose the Malpractice MSJ credible. Defendant testified that he believed the misappropriation arguments were "minor" and that the arguments were only "evidentiary" in nature, but that he believed he would breach a fiduciary duty to Mr. Gunnell if he did not oppose the Malpractice MSJ based on the misappropriation allegations.

The most likely reason Defendant failed to dismiss the allegations was because they were part of his attempted shakedown of a monetary settlement from Plaintiff. If Defendant intended to try the Malpractice Action, or had any reasonable belief he could prevail, he would have done the work and spent the funds to prepare the case for trial. Instead, Defendant did not attempt to obtain any evidentiary support, prior to the discovery cutoff set by the trial court, for either the misappropriation allegations or Defendant's contention that Metrocolor knew about any of Mr. Gunnell's injuries during the Employment Period.

The only way for Defendant to accomplish his stated goal of obtaining a recovery for Mr. Gunnell was to obtain money from Plaintiff *for which she was not liable*.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 14, 2018

Hearing Room 301

---

2:30 PM

CONT...

**James Ellis Arden**

**Chapter 7**

Accusing a practicing attorney of concealing settlement, forging a signature and stealing the money in the court in which she practices, knowing the allegations are not true, evinces a specific intent to harm. Accusing an attorney of "dropping" a theory she did not drop, while Defendant knew the theory was patently inapplicable and that the testimony on which Defendant relied was not available to Plaintiff during the Malpractice Action, in the hope of shaking down the attorney for money, also demonstrates a specific intent to harm. As in *Ormsby* and *Jercich*, Defendant's pursuit of the Malpractice Action, when that arguments related to that action were meritless, was certain to cause Plaintiff inconvenience and monetary loss. In light of the above, Plaintiff has proven, by a preponderance of the evidence, that Defendant willfully injured Plaintiff through his pursuit of the Malpractice Action.

### **III. CONCLUSION**

The Court will enter judgment in favor of Plaintiff.

Plaintiff must submit a proposed judgment no later than seven (7) days.

### **FOOTNOTES**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. Unless this decision references a document from these dockets or an exhibit, the facts are derived from testimony provided at trial.
  
2. The parties are unclear about which entities employed Mr. Gunnell between February 1989 and June 1989. For ease of reference, the Court will refer to Metrocolor as Mr. Gunnell's employer, although Mr. Gunnell may have had additional or different employers during this time period.
  
3. The other plaintiffs received varying amounts to settle their claims, as set forth in Appendices B-D of the VWR Agreement.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**James Ellis Arden**

**Chapter 7**

4. In *Johns-Manville*, the California Supreme Court explained:

In the present case, plaintiff alleges that defendant fraudulently concealed from him, and from doctors retained to treat him, as well as from the state, that he was suffering from a disease caused by ingestion of asbestos, thereby preventing him from receiving treatment for the disease and inducing him to continue to work under hazardous conditions. These allegations are sufficient to state a cause of action for aggravation of the disease, as distinct from the hazards of the employment which caused him to contract the disease.

...

We conclude the policy of exclusivity of workers' compensation as a remedy for injuries in the employment would not be seriously undermined by holding defendant liable for the aggravation of this plaintiff's injuries, since we cannot believe that many employers will aggravate the effects of an industrial injury by not only deliberately concealing its existence but also its connection with the employment.

*Johns-Manville*, 27 Cal.3d at 477-78.

5. The Court includes information about the Malicious Prosecution Judgment and the appeal therefrom as a recounting of procedural history. The Court is not relying on any of the findings of fact or law from these decisions as concerns this Court's analysis of the "willfulness" element of 11 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 14, 2018**

**Hearing Room 301**

2:30 PM

**CONT... James Ellis Arden  
523(a)(6).**

**Chapter 7**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Defendant(s):**

James Ellis Arden

Represented By  
Steven R Fox

**Plaintiff(s):**

Martina A Silas

Represented By  
Martina A Silas

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12214 Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

**#1.00 Chapter 7 Trustee's First Interim Application for Compensation and Reimbursement of Expenses**

Docket 82

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 11/29/18 at 10:30 AM [Dkt. 87]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12214 Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

**#1.10** First interim application for allowance of fees and costs  
filed by Marshack Hayes LLP as general counsel

Docket 84

**\*\*\* VACATED \*\*\* REASON: Hearing rescheduled for 11/29/18 at 10:30  
AM [Dkt. 87]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud  
D Edward Hays



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#2.00** First and final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the debtors, for allowance of fees and reimbursement of costs for the period April 18, 2017 through August 20, 2018

Docket 149

**Tentative Ruling:**

Resnik Hayes Moradi LLP ("Applicant") general counsel to debtors in possession – approve fees of \$67,214.00 and reimbursement of expenses of \$1,866.00, pursuant to 11 U.S.C. § 330, on a final basis. The Court has not awarded \$675.00 in fees for the reasons stated below.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 15, 2018

Hearing Room 301

10:30 AM

CONT... Kevin C. Polito and April Dawn Underwood

Chapter 11

disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Case Administration	4/25/17	Rosario Zubia	\$135.00	.70	\$94.50	Reviewed and drafted supplemental compliance re taxes. Gather docs and prepared for uploading
Case Administration	4/25/17	Rosario Zubia	\$135.00	2.20	\$297.00	Reviewed and drafted 7 day compliance packet. Gather all docs and prepared for uploading.
Case Administration	4/27/17	Rosario Zubia	\$135.00	.30	\$40.50	Reviewed and gathered certified VP, prepared for filing with the L.A. County Recorder
Case Administration	5/1/17	Rosario Zubia	\$135.00	.30	\$40.50	Drafted POS for schedules, SOFA and related documents. Prepared for filing.
Case Administration	5/19/17	Rosario Zubia	\$135.00	.60	\$81.00	Reviewed and drafted Sch F to include another creditor. Drafted POS, prepared for filing.
Case Administration	5/25/17	Rosario Zubia	\$135.00	.30	\$40.50	Drafted POS for Amended SOFA. Prepared for filing.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

**10:30 AM**

**CONT...**

**Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

Case Administration	9/29/17	Rosario Zubia	\$135.00	.30	\$40.50	Received signed Financial Management Certificate, prepared for filing.
General Creditor Issues	2/16/18	Rosario Zubia	\$135.00	.30	\$40.50	Faxed letter to creditor re violating stay. Emailed copy to Debtors.

The Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#3.00** Application for payment of final fees and/or expenses (11 USC §330)  
for Giovanni Orantes, Debtor's Attorney, Period: 10/11/2017 to 2/26/2018

Docket 343

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 11/29/18 at 10:30 AM [Dkt.  
355]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#4.00** First and final application for compensation and reimbursement of expenses of Grobstein Teeple, LLP as accountants for the Chapter 11 Trustee

Docket 351

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 11/29/18 at 10:30 AM [Dkt. 355]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#5.00** Application for payment of final fees and/or expenses under 11 U.S.C. § 330 for Levene, Neale, Bender, Yoo & Brill L.L.P., Trustee's Attorney, Period: 2/2/2018 to 10/17/2018

Docket 346

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 11/29/18 at 10:30 AM [Dkt. 355]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#6.00** First and final fee application of Chapter 11 Trustee for approval of compensation and reimbursement of expense period: 2/6/2018 to 10/15/2018

Docket 338

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 11/29/18 at 10:30 AM [Dkt. 355]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10885 Qiuling Sun Kai**

**Chapter 7**

**#7.00** Chapter 7 Trustee's first interim application for compensation and reimbursement of expenses

Docket 56

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$26,677.62 and reimbursement of expenses of \$47.64. The trustee may collect 100% of the approved fees and 100% of the approved expenses at this time.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

**Party Information**

**Debtor(s):**

Qiuling Sun Kai

Represented By  
William E Windham

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
D Edward Hays  
Laila Masud



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**1:18-10885 Qiuling Sun Kai**

**Chapter 7**

**#7.10** First interim application for allowance of fees and costs filed by Marshack Hayes LLP as general counsel

Docket 58

**Tentative Ruling:**

Pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), Marshack Hays LLP ("Marshack") must file a client declaration regarding its fee application, or a statement regarding steps taken to obtain such declaration if none is forthcoming. Provided that such declaration is timely filed, the Court will approve fees and expenses as follows:

Marshack, general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$23,804.00 and reimbursement of expenses of \$1,085.71, pursuant to 11 U.S.C. § 331, on an interim basis. Marshack may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court has not awarded \$3,659.00 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Qiuling Sun Kai**

**Chapter 7**

of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Meetings of Creditors	5/21/18	LM	\$330.00	6.00	\$1,980.00	Drive to, from and attend initial 341(a) meeting of creditors

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

10:30 AM

CONT...

**Qiuling Sun Kai**

**Chapter 7**

Fee/Employment Applications	5/14/18	LM	\$330.00	.70	\$231.00	Review and revise application to employ broker (.60); Draft written correspondence to D. Edward Hays re: same (.10)
Fee/Employment Applications	5/14/18	LM	\$330.00	.70	\$231.00	Review, revise and supplement application to employ (.60); Draft written correspondence to D. Edward Hays re: same (.10)
Fee/Employment Applications	5/14/18	PK	\$270.00	.40	\$108.00	Draft Trustee's application to employ real estate agent
Fee/Employment Applications	5/14/18	PK	\$270.00	.40	\$108.00	Draft Trustee's application to employ counsel
Fee/Employment Applications	5/22/18	LM	\$330.00	.70	\$231.00	Review and revise application to employ real estate brokers (.50); Draft written correspondence to Diana Hagopian re: statement of disinterestedness (.10); Draft written correspondence to Anna Kuras re: same and executed statement (.10)
Fee/Employment Applications	5/22/18	LM	\$330.00	.20	\$66.00	Conference with D. Edward Hays re: revisions to broker application and statement of disinterestedness (.10); Draft written correspondence to Anna Kuras re: same and executed statement (.10)
Fee/Employment Applications	5/22/18	LM	\$330.00	.20	\$66.00	Draft written correspondence to trustee's office re: review and execution of application to employ Marshack Hays as general bankruptcy counsel (.10); Draft written correspondence to Pamela Kraus re: same (.10)
Fee/Employment Applications	5/22/18	PK	\$270.00	.40	\$108.00	Draft notice of trustee's application to employ counsel
Fee/Employment Applications	5/22/18	DEH	\$630.00	.20	\$126.00	Conference with Laila Masud re: revisions to broker application
Fee/Employment Applications	5/24/18	LM	\$330.00	.20	\$66.00	Review and revise notice of application to employ Marshack Hays as general bankruptcy counsel (.10); Draft written correspondence to Pamela Kraus re: same (.10)
Fee/Employment Applications	6/11/18	LM	\$330.00	.30	\$99.00	Review and revise declaration of non-opposition re: application to employ (.10); Review and revise order re: application to be employed (.10); Draft written correspondence to Pamela Kraus re: same (.10)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

**10:30 AM**

**CONT...**

**Qiuling Sun Kai**

**Chapter 7**

Fee/Employment Applications	6/11/18	PK	\$270.00	.40	\$108.00	Draft declaration of non-opposition and order granting trustee's application to employ counsel
Fee/Employment Applications	6/13/18	LB	\$230.00	.10	\$23.00	Conference with Laila Masud re: employment order and declaration of non-opposition
Fee/Employment Applications	6/13/18	PK	\$270.00	.40	\$108.00	Revise declaration of non-opposition and order granting trustee's application to employ counsel

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Marshack is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Marshack will be so notified.

**Party Information**

**Debtor(s):**

Qiuling Sun Kai

Represented By  
William E Windham

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
D Edward Hays  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

1:00 PM

**1:13-17502 Glenroy E Day, Jr.**

**Chapter 11**

**#8.00** Status conference in re-opened chapter 11 case  
pursuant to 11 U.S.C. sec 105(D)

fr. 4/12/18; 5/10/18; 7/19/18

Docket 1

**Tentative Ruling:**

On November 1, 2018, the debtor filed a status report [doc. 280], indicating the appeal of the *Order Regarding Debtor's Motion for Order Determining Value of Collateral* [doc. 261] has not concluded. Having reviewed the status report and in light of the pending appeal, the Court will continue this status conference to **February 21, 2019 at 1:00 p.m.**

No later than **February 7, 2019**, the reorganized debtor must file a status report regarding the progress of the pending appeal. The status report **must be supported by evidence.**

Appearances on November 15, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Glenroy E Day Jr.

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

1:00 PM

**1:17-13142 Amir Elosseini**

**Chapter 11**

**#9.00** Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's ruling on August 16, 2018, the debtor did not timely file a status report supported by evidence in the form of declarations and supporting documents.

The debtor must provide more specific information about the status of his ongoing litigation with the Regents of the University of California. Has a trial or arbitration date been set? Is discovery ongoing? Have the parties participated in mediation?

The debtor filed his chapter 11 petition nearly one year ago. Irrespective of whether or not that litigation has concluded, the Court does not intend to provide another extension of the current deadline, *i.e.*, January 15, 2019, for the debtor to file a chapter 11 plan and disclosure statement. T

If the debtor has not filed a chapter 11 plan and disclosure statement by that deadline, his failure to do so will constitute cause to convert the case to chapter 7 or to dismiss the case, with a 180-day bar.

**Ruling from 8/16/18**

Having reviewed the *Case Status Conference Report* [doc. 57] filed by the debtor, the Court will continue this status conference to **November 15, 2018 at 1:00 p.m.** The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on August 16, 2018 are excused.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Amir Elosseini**

**Chapter 11**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amir Elosseini

Represented By  
Kevin Tang

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#10.00** Status conference re: chapter 11 case  
from: 3/29/18; 4/12/18

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to **December 6, 2018 at 2:00 p.m.**, to be held in connection with the hearing on the debtor and debtor in possession's motion to extend the time to file a plan of reorganization and disclosure statement [doc. 190].

Appearances on November 15, 2018 are excused.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#11.00** Status conference re chapter 11 case

fr. 6/21/18; 10/11/18

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to **December 13, 2018 at 1:00 p.m.**, to be held following the continued hearing on the motion to value the debtor's real property [*see* doc. 67].

Appearances on November 15, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12325 12 Cumpston Partnership**

**Chapter 11**

**#12.00** Status conference re chapter 11 case

Docket 1

**Tentative Ruling:**

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **January 4, 2019.**

Deadline to mail notice of Bar Date: **November 19, 2018.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to serve notice of the hearing to consider the adequacy of the proposed disclosure statement [doc. 24]: **November 29, 2018.**

Continued chapter 11 case status conference and hearing to consider the adequacy of the proposed disclosure statement to be held at **1:00 p.m. on January 10, 2019.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s)' 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report **MUST BE SUPPORTED BY EVIDENCE** in the form of declarations and supporting documents.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

12 Cumpston Partnership

Represented By  
Mark E Goodfriend

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:17-11495 Steven Nia**

**Chapter 7**

**#13.00** Debtor's motion to compel abandonment pursuant to  
11 U.S.C. §554(a)(2) and Federal Rules Of Bankruptcy Procedure 6007(a)

Docket 211

**\*\*\* VACATED \*\*\* REASON: Motion withdrawn 10/31/18 - jc**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steven Nia

Represented By  
Steven R Fox  
Lewis R Landau

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Scott Lee  
Amy L Goldman  
Lovee D Sarenas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#14.00** Motion RE: Objection to Claim Number 5 by  
Claimant Pogos Araik Melkonian. Debtors

Docket 94

**\*\*\* VACATED \*\*\* REASON: Order continuing hearing to 1/17/19 entered  
11/9/18 [doc. 125].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#14.10 Debtor's Motion to strike untimely and belated declarations of Samvel Ispiryan (Doc. 114) and Akop Tashyan (Doc. 115)**

Docket 118

**Tentative Ruling:**

In light of the order continuing the objection to the claim of Pogos Araik Melkonian to January 17, 2019 [doc. 125], the Court will continue this matter to **2:00 p.m. on January 17, 2019.**

Appearances on November 15, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#15.00** Joint Motion by the Trustee and Debtor to dismiss chapter 11 case

Docket 352

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 11/29/18 at 2:00 PM [Dkt. 356]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#16.00** Confirmation hearing re chapter 11 plan of reorganization

Docket 50

**Tentative Ruling:**

On September 24, 2018, the Court entered an order approving the use of the debtor's disclosure statement to solicit acceptances and rejections of the debtor's chapter 11 plan [doc. 63]. On October 1, 2018, the debtor and Wells Fargo Bank, N.A. ("Wells Fargo") entered into a stipulation regarding the treatment of Wells Fargo's claim under the debtor's chapter 11 plan (the "Stipulation") [doc. 65]. On October 3, 2018, the Court entered an order approving the Stipulation [doc. 68].

The Stipulation increases the debtor's monthly plan payment to Wells Fargo from \$2,775.00 to \$2,975.52. It also requires the debtor to make a lump sum payment of \$12,000.00 to Wells Fargo on November 30, 2018.

In light of the Stipulation, the Court will continue this hearing to **November 29, 2018 at 2:00 p.m.** In order for the Court to assess whether the debtor's chapter 11 plan complies with 11 U.S.C. § 1129(a)(11), **no later than November 26, 2018**, the debtor must file an updated income and expense projection for six-months following the confirmation of the plan of reorganization, which reflects the debtor's actual income and expenses, as set forth in the debtor's last six monthly operating reports.

The updated income and expense projection must include the increased monthly payments to Wells Fargo, as well as any other plan payments.

**Party Information**

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#17.00** Status conference re: chapter 11 case  
fr. 5/3/18; 8/16/18; 9/20/18

Docket 1

**Tentative Ruling:**

See calendar no. 16.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10694 Charles Hung Ngo**

**Chapter 7**

**#18.00** Motion for turnover of property of the estate

fr. 7/19/18; 9/13/18(stip)

Docket 18

**Tentative Ruling:**

In his opposition to the debtor's motion to convert the case [doc. 41], the chapter 7 trustee (the "Trustee") represented that the sale of the debtor's residence will enable the Trustee to pay all of the claims against the estate in full. Given that 11 U.S.C. § 542(a) requires turnover of assets "*unless* such property is of inconsequential value or benefit to the estate," the Court will not require turnover of the debtor's tax refunds or the cash in the debtor's checking account at this time. 11 U.S.C. § 542(a) (emphasis added).

The Court will continue this hearing to **2:00 p.m. on February 21, 2019**, at which time the Court will assess if the sale of the debtor's residence will generate sufficient funds to pay all claims against the estate in full.

Appearances on November 15, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Charles Hung Ngo

Represented By  
Thomas K Emmitt

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Carmela Pagay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 15, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#19.00** Debtor's Emergency motion for orders authorizing interim and final use of cash collateral

fr. 9/11/18; 9/20/18

Docket 18

**\*\*\* VACATED \*\*\* REASON: Continued to 11/29/18 at 2:00 PM pursuant to ruling on 10/18/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-11850 Krikor Semerjian and Nora Ayvazian**

**Chapter 7**

**#1.00** Reaffirmation agreement between Debtor and  
American Honda Finance Corporation

Docket 19

**\*\*\* VACATED \*\*\* REASON: Withdrawl filed on 11/8/18 (J.J.)**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Krikor Semerjian

Represented By  
Tamar Terzian

**Joint Debtor(s):**

Nora Ayvazian

Represented By  
Tamar Terzian

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12041 Ramon Castaneda**

**Chapter 7**

**#2.00** Reaffirmation agreement between Debtor and Hyundai Motor Finance

Docket 11

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ramon Castaneda

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12160 Jorge Luis Solares and Ana Veronica Solares**

**Chapter 7**

**#3.00** Reaffirmation agreement between Debtor and  
Toyota Motor Credit Corporation

2015 Toyota Camry

Docket 9

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Luis Solares

Represented By  
Kenumi T Maatafale

**Joint Debtor(s):**

Ana Veronica Solares

Represented By  
Kenumi T Maatafale

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12160 Jorge Luis Solares and Ana Veronica Solares**

**Chapter 7**

**#4.00** Reaffirmation agreement between Debtor and  
Toyota Motor Credit Corporation

2014 Toyota Corolla

Docket 10

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Luis Solares

Represented By  
Kenumi T Maatafale

**Joint Debtor(s):**

Ana Veronica Solares

Represented By  
Kenumi T Maatafale

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12160 Jorge Luis Solares and Ana Veronica Solares**

**Chapter 7**

**#5.00** Reaffirmation agreement between Debtor and  
Toyota Motor Credit Corporation

2016 Nissan Sentra

Docket 11

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jorge Luis Solares

Represented By  
Kenumi T Maatafale

**Joint Debtor(s):**

Ana Veronica Solares

Represented By  
Kenumi T Maatafale

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 20, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12221 Hector Donan**

**Chapter 7**

**#6.00** Reaffirmation agreement between Debtor and Toyota Motor Credit Corporation

Docket 8

**Party Information**

**Debtor(s):**

Hector Donan

Represented By  
R Grace Rodriguez

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-11900 Maryam Hadizadeh

Chapter 7

#1.00 Motion for relief from stay [AN]

MONA SOLEIMANI AND DANNY PAVEHZADEH  
VS  
DEBTOR

fr. 10/10/18; 10/17/18

Docket 15

**Tentative Ruling:**

On October 29, 2018, the Court entered an order assigning this matter to the mediation program [doc. 33]. What is the status of the parties' participation in mediation?

**Tentative Ruling From 10/10/18**

Apparently, the validity of the quitclaim deed at issue is being challenged, and that dispute is pending before the state court. What is the status of the movants' preparation to try this matter in state court? Would it be possible for this Court to adjudicate that issue in or before December 2018?

If this Court grants relief from the automatic stay for the state court to determine only this issue, *i.e.*, the validity of the quitclaim deed, why can't the chapter 7 trustee represent and litigate the interest of the debtor's bankruptcy estate in the real property (if any) in the state court?

In light of the expense of litigating this issue, are the movants and the chapter 7 trustee willing to participate in the Court's mediation program, in an attempt to resolve this dispute consensually?

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Maryam Hadizadeh**

**Chapter 7**

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-10982 Gabriel Medina

Chapter 13

#2.00 Motion for relief from stay [RP]

STRUNZO DEVELOPMENT CORPORATION  
VS  
DEBTOR

fr. 10/10/18

**Stip to continue filed 11/16/18**

Docket 66

\*\*\* VACATED \*\*\* REASON: Order approving stip to continue entered  
11/19/18. Hearing continued to 12/19/18 at 9:30 AM.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase  
Sedoo Manu

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-11600 Ricardo Sanchez

Chapter 7

#3.00 Motion for relief from stay [PP]

HONDA LEASE TRUST  
VS  
DEBTOR

Docket 29

\*\*\* VACATED \*\*\* REASON: Case dismissed on 11/14/18 [doc. 32]. The motion is moot.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ricardo Sanchez

Represented By  
Leroy Bishop Austin

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-12324 Rosa Elia Jimenez

Chapter 7

#4.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Rosa Elia Jimenez

Represented By  
Derik N Lewis

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Rosa Elia Jimenez**

**Chapter 7**

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Darlene C Vigil

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-11350 Robert Earl Tetreault, Jr. and Erin Leigh O'Connor

Chapter 13

#5.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC  
VS  
DEBTOR

Docket 34

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Upon entry of the 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).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Robert Earl Tetreault Jr.

Represented By  
Julie J Villalobos

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Robert Earl Tetreault, Jr. and Erin Leigh O'Connor**

**Chapter 13**

**Joint Debtor(s):**

Erin Leigh O'Connor

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

9:30 AM

1:18-12555 Francisco Javier Miranda

Chapter 13

#5.01 Motion for relief from stay [RP]

SHERWOOD TOWNHOMES ASSOCIATION  
VS  
DEBTOR

fr. 11/7/18

Docket 10

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 11/8/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Francisco Javier Miranda

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, November 21, 2018

Hearing Room 303

9:30 AM

1:18-12606 Marcelo Alejandro Cabrera

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 9

**Tentative Ruling:**

The Court will grant the motion on an interim basis and continue the hearing to **December 19, 2018 at 9:30 a.m.** The debtor has not served the motion and notice thereof on *all* creditors in accordance with Fed. R. Bankr. P. 9013(b) and 7004(b)(3) and (h) and Local Bankruptcy Rule 9013-1(a)(6), *i.e.*, by delivering a copy of the motion and notice thereof to an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process.

No later than **November 27, 2018**, the debtor must file and serve notice of the continued hearing, and the deadline to file a response 14 days prior thereto, on *all* creditors.

**Party Information**

**Debtor(s):**

Marcelo Alejandro Cabrera

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#7.00** Motion by plaintiff to substitute John Van Dyke as defendant

fr. 8/15/18; 9/12/18;

Docket 55

**Tentative Ruling:**

In light of the status report filed by the chapter 7 trustee in *Seror v. Muennichow* [1:17-ap-01069-VK, doc. 71], the Court will continue this hearing to **1:30 p.m. on February 20, 2019.**

Appearances on November 21, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#8.00** Plaintiff's motion to substitute Helayne Muennichow  
as Defendant

fr. 7/18/18; 8/15/18; 9/12/18;

Docket 45

**Tentative Ruling:**

In light of the status report filed by the chapter 7 trustee in *Seror v. Muennichow* [1:17-ap-01069-VK, doc. 71], the Court will continue this hearing to **1:30 p.m. on February 20, 2019.**

Appearances on November 21, 2018 are excused.

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01058 Van Dyke v. Muennichow

**#9.00** Status conference re: complaint to except debt from discharge pursuant to 11 U.S.C. § 523(a)(2)(A); 11 U.S.C. § 523(a)(4), 11 U.S.C. §523(a)(6)

fr. 9/13/17; 10/4/17; 11/15/17; 12/13/17; 2/14/18; 4/4/18; 5/9/18; 8/9/18; 8/15/18; 9/12/18;

Docket 1

**Tentative Ruling:**

In light of the status report filed by the chapter 7 trustee in *Seror v. Muennichow* [1:17-ap-01069-VK, doc. 71], the Court will continue this status conference to **1:30 p.m. on February 20, 2019.**

Appearances on November 21, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Pro Se

**Plaintiff(s):**

Duane J Van Dyke

Represented By  
Robert G Uriarte

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:17-01069 Seror v. Muennichow et al

- #10.00** Status conference re: complaint
- 1) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(A)];
  - 2) Avoidance Of Fraudulent Transfers [11 U.S.C. § 548(a)(1)(B)];
  - 3) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.04(a)(1)];
  - 4) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code § 3439.04(a)(2)]
  - 5) Avoidance Of Fraudulent Transfers [11 U.S.C. § 544; 26 U.S.C. § 6502; Cal. Civ. Code §§ 3439.05];
  - 6) Recovery And Preservation Of Avoided Transfers [11 U.S.C. §§ 550, 551; Cal. Civ. Code § 3439.07];
  - 7) Disallowance Of Claims [11 U.S.C. § 502(d), (j)];
  - 8) Denial Of Discharge [11 U.S.C. § 727(a)(2)(A)];
  - 9) Denial Of Discharge [11 U.S.C. § 727(a)(4)(A)];
  - 10) Denial Of Discharge [11 U.S.C. § 727(a)(4)(D)]; and
  - 11) Denial Of Discharge [11 U.S.C. § 727(a)(5)]

fr. 10/4/17; 5/9/18(stip); 9/12/18;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 10/12/18 approving stip to cont to 2/20/19 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT...**     **Hermann Muennichow**  
                  Helayne Muennichow

Represented By  
Gary A Kurtz

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Nina Z Javan  
Reagan E Boyce  
Richard Burstein

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#11.00**      Status conference re: complaint for interpleader

fr. 9/12/18;

Docket      1

**Tentative Ruling:**

In light of the status report filed by the chapter 7 trustee in *Seror v. Muennichow* [1:17-ap-01069-VK, doc. 71], the Court will continue this status conference to **1:30 p.m. on February 20, 2019.**

Appearances on November 21, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By  
Richard Burstein

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10762 Jaime R Lara**

**Chapter 7**

Adv#: 1:18-01100 Weil, Chapter 7 Trustee v. Greater La Escrow, Inc., a California corporation

- #12.00** Status conference re: complaint for:  
1) Turnover of property of the estate;  
2) Declaratory relief; and  
3) Violation of automatic stay

fr. 10/31/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stip entered on 10/18/18  
continuing hearing to 1/9/19 at 1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jaime R Lara	Pro Se
--------------	--------

**Defendant(s):**

Greater La Escrow, Inc., a California	Pro Se
---------------------------------------	--------

Diane E Lara	Pro Se
--------------	--------

**Plaintiff(s):**

Diane C. Weil, Chapter 7 Trustee	Represented By Elissa Miller
----------------------------------	---------------------------------

**Trustee(s):**

Diane C Weil (TR)	Represented By Elissa Miller Claire K Wu
-------------------	--

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

**1:10-17214 Darin Davis**

**Chapter 7**

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

**#13.00** Defendant Darin Davis' motion for attorney's fees

fr. 9/12/18; 10/17/18

Docket 228

**Tentative Ruling:**

The Court will award Darin Davis ("Defendant") \$91,390.92 in attorneys' fees and \$956.87 in costs. The Court will issue a decision incorporating the Court's prior rulings on this matter.

**I. BACKGROUND**

On October 17, 2018, the Court held a continued hearing on *Defendant Darin Davis' Motion for Attorney's Fees* (the "Motion") [doc. 228]. After issuing a ruling on the merits, the Court continued the hearing on the Motion for Defendant's counsel, Alan W. Forsley, to file a declaration detailing the fees and costs incurred in connection with defending the 11 U.S.C. § 523(a)(2)(A) portion of this adversary proceeding.

On October 31, 2018, Mr. Forsley filed the *Supplemental Declaration of Alan W. Forsley in Support of Defendant Darin Davis' Motion for Attorney's Fees* (the "Forsley Declaration") [doc. 251]. On November 14, 2018, Asphalt Professionals, Inc. ("Plaintiff") filed a response to the Forsley Declaration [doc. 252].

**II. ANALYSIS**

Movants bear the burden of proving that the fees sought are reasonable. *Center for Biological Diversity v. Cty. of San Bernardino*, 188 Cal.App.4th 603, 615 (Ct. App. 2010); *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). Both California state courts and the Ninth Circuit Court of Appeals customarily assess the reasonableness of attorneys' fees utilizing the "lodestar" approach where the number of hours

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Darin Davis**

**Chapter 7**

reasonably expended is multiplied by a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006).

"A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "After computing the lodestar, the court must assess whether additional considerations require adjustment of the figure, such as the novelty or complexity of the issues, the skill and experience of counsel, the quality of representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at \*4.

Here, the Court already found in a prior ruling that Mr. Forsley's hourly rate of \$425 per hour is reasonable. That Mr. Forsley's hourly rate increased during the course of this litigation to correspond with applicable market rates is not a reason to deny Defendant's request for attorneys' fees. As such, the sole issue left with respect to this matter is whether the fees requested by Defendant are reasonable.

Pursuant to the Court's instructions, Mr. Forsley attempted to reduce his request by deducting amounts billed in connection with the denial of discharge portion of this adversary proceeding and related to other actions. Mr. Forsley deducted \$71,386 from his total incurred fees of \$200,451.37 for a current request of \$129,065.37, and deducted \$720.27 from his total incurred costs of \$2,221.81 for a current request of \$1,501.74.

However, by the Court's calculation, the itemized fee and cost statement entitles Defendant to a total of \$91,390.92 in fees and \$956.87 in costs. First, the Court deducted any redacted items from the total calculation. Next, many of the itemized statements included tasks that were lumped with unrelated matters, such as state court matters (pp. 5-6, 50), matters related to different clients (p. 6, 11/10/10), litigation against the chapter 7 trustee, such as opposing sales in Defendant's main bankruptcy case (pp. 44 [4/17/14], 74-75, 89) or the unrelated *Bustamante* matters (pp. 17, 28, 31, 34, 55, 100). To the extent Mr. Forsley lumped disallowed tasks with other tasks, *without specifying how much time was spent on each individual task*, the Court disallowed the entry in its entirety. If Mr. Forsley specified the amount of time spent on each task, i.e., in parentheses, the Court deducted only the disallowed tasks and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Darin Davis**

**Chapter 7**

included the allowed tasks in its calculation of allowed fees.

The Court also deducted time spent on the motion to quash the deposition of Joshua Levy (pp. 13-24), because the Court ordered Mr. Levy to appear for his deposition. As such, the Court will not award fees incurred in connection with Defendant's attempt to prevent Plaintiff's deposition of Mr. Levy. The Court also did not award any fees incurred in connection with Mr. Forsley's motion to withdraw from representing Defendant (pp. 89, 91-92), or related to a motion to dismiss that Defendant did not file (pp. 42, 48-49). Finally, the Court did not include any fees incurred in connection with any appellate matters (pp. 28, 74-75).

As for costs, many of the entries did not specify for which matter Defendant incurred costs. Where the Court reduced fees in connection with an invoice, and the costs may have been related to matters unrelated to the 11 U.S.C. § 523 litigation, the Court did not award costs. In light of the above, the Court will allow Defendant to recover \$91,390.92 in fees and \$956.87 in costs.

### **III. CONCLUSION**

The Court will award Defendant \$91,390.92 in attorneys' fees and \$956.87 in costs. The Court will prepare an order and issue a decision incorporating its prior rulings and the analysis above.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Darin Davis

Represented By  
Alan W Forsley  
Casey Z Donoyan

**Defendant(s):**

Darin Davis

Represented By  
Alan W Forsley

**Plaintiff(s):**

Asphalt Professionals Inc

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

---

2:30 PM

CONT...

**Darin Davis**

Ray B Bowen JR

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By

Richard K Diamond (TR)

Robert A Hessling

Robert A Hessling

Michael G D'Alba

Richard K Diamond

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**1:18-11470 Asif Sheikh**

**Chapter 7**

Adv#: 1:18-01094 Karimzad v. Sheikh et al

**#14.00** Defendant's motion to dismiss adversary complaint or in the alternative for a more definite statment and motion to strike immaterial and scandalous allegations Rule 12(b)(6),(e),(f)

Docket 4

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On June 9, 2018, Asif Sheikh and Sajida Sheikh ("Defendants") filed a voluntary chapter 7 petition. On August 14, 2018, Molouk Karimzad ("Plaintiff") filed a complaint against Defendants (the "Complaint"), requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2)(A) and objecting to Defendants' discharge under 11 U.S.C. § 727(a)(4). In relevant part, the Complaint includes the following allegations:

Plaintiff was a dependent adult for purposes of the California Elder Abuse Law at the time of the relevant events. Defendants approached Plaintiff and asked her to loan them money in exchange for a proposed interest rate. Defendants prepared the loan documents and assured Plaintiff she would be paid. When Defendants sought the loan from Plaintiff, they brought with them one of Plaintiff's trusted friends and convinced Plaintiff that Defendant also had obtained a loan that Defendants repaid from Plaintiff's friend.

On November 9, 2012, Plaintiff and Defendants entered into a written agreement whereby Plaintiff loaned \$50,000 to Defendants at an interest rate of 12% per annum, with interest only payments of \$500 per month from December 2012 through May 9, 2013. The agreement called for payment of the principal debt in full on or before June 9,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Asif Sheikh**  
2013.

**Chapter 7**

On December 18, 2012, Plaintiff and Defendants entered into another written agreement whereby Plaintiff loaned another \$50,000 to Defendants at an interest rate of 12% per annum, with interest only payments of \$500 per month from December 2012 through December 2013. This agreement called for payment of the principal debt in full on or before December 2013.

On February 13, 2013, Plaintiff and Defendants entered into a third agreement whereby Plaintiff loaned Defendants \$25,000 at an interest rate of 24% per annum, with interest only payments of \$500 per month from July 2013 through November 2013. The agreement called for payment of the principal debt in full on or before December 10, 2013.

Defendants provided "final repayment checks" of \$50,000 for the first two agreements. However, while Defendants initially paid interest payments, they thereafter did not abide by the agreements. In October 2014, Plaintiff notified Defendants of their default and demanded payment. Defendants instructed Plaintiff not to cash their prepayment checks and promised they would resume paying interest.

Defendants also represented to Plaintiff that they were going to sell their business, a Fatburger franchise (the "Fatburger"). Defendants told Plaintiff that, when the Fatburger sold, Defendants would pay Plaintiff in full. Based on Defendants' representations, Plaintiff agreed to modifying the agreements. From October 2014 through February 2017, Defendants continued to indicate that once the Fatburger sold they would pay off the loans in full.

Defendants concealed from Plaintiff that they had many other loans they were obligated to repay from the sale of the Fatburger. In February 2017, Plaintiff learned that Defendants sold the Fatburger, but intentionally did not notify Plaintiff of the sale. Plaintiff was never paid from the proceeds of the sale.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Asif Sheikh**

**Chapter 7**

Defendants engaged in a pattern of conduct seeking elderly people for money to finance their business projects and extravagant lifestyles. On June 27, 2017, Plaintiff filed a lawsuit against Defendants in state court, asserting causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation and elder abuse.

In addition, Defendants failed to schedule their interest in Black Diamond Food Group 1, LLC and Black Diamond Food Group 2, LLC. The omission was a deliberate omission of a material matter constituting a false oath, and Defendants failed to disclose these assets with the intent to mislead creditors and the trustee as to Defendants' true financial condition, or with reckless disregard for the truth.

Complaint, pp. 2-7.

On September 6, 2018, Defendants filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. In the Motion, Defendants assert that Plaintiff did not sufficiently plead causation. Defendants also request that the Court strike paragraphs 7, 23-27 and 46-51 as immaterial or scandalous. In addition, Defendants attached a declaration by Mr. Sheikh (the "Sheikh Declaration") and several exhibits. On November 2, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 9], asserting that Plaintiff has sufficiently alleged a claim under § 523(a)(2)(A). Plaintiff also requests that the Court strike the Sheikh Declaration, on the basis that the Sheikh Declaration is extrinsic evidence that is improper for consideration in a motion under Federal Rule of Civil Procedure ("Rule") 12(b)(6). On November 13, 2018, Defendants filed a reply to the Opposition [doc. 13], requesting that the Court consider the Sheikh Declaration and treat the Motion as a motion for summary judgment.

## **II. ANALYSIS**

### ***A. Rule 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Asif Sheikh**

**Chapter 7**

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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). "A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Asif Sheikh**

**Chapter 7**

Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

***B. 11 U.S.C. § 523(a)(2)(A)***

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

For purposes of 11 U.S.C. § 523(a)(2)(A), "[t]he alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt." *In re Lee*, 536

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Asif Sheikh**

**Chapter 7**

B.R. 848, 855 (Bankr. N.D. Cal. 2015) (citing *In re Boyajian*, 367 B.R. 138, 147 (B.A.P. 9th Cir. 2007), *aff'd*, 564 F.3d 1088 (9th Cir. 2009)). As explained by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"):

For purposes of § 523(a)(2), however, the timing of the fraud and the elements to prove fraud focus on the time when the lender ... made the extension of credit to the Debtor. In other words, the assignee of the Agreement ... steps into the shoes of its assignor ..., and the inquiry of whether a creditor justifiably relied on Debtor's alleged misrepresentations is focused on the moment in time when that creditor extended the funds to Debtor. See *McClellan v. Cantrell*, 217 F.3d 890, 896 (7th Cir. 2000) (Ripple, Circuit Judge, concurring) (noting Congress' use of "obtained by" in § 523(a)(2) "clearly indicates that fraudulent conduct occurred at the inception of the debt, i.e. the debtor committed a fraudulent act to induce the creditor to part with his money or property.").

*Boyajian*, 367 B.R. at 147 (citing *In re Dobek*, 278 B.R. 496, 508 (Bankr. N.D. Ill. 2002)).

Here, Plaintiff's claim under § 523(a)(2)(A) is based on the allegation that Defendants convinced Plaintiff not to collect on the defaulted debt, such as by cashing prepayment checks, by representing to Plaintiff that they would repay the loans from the sale of the Fatburger. Plaintiff further alleges that Defendants concealed that they were obligated to pay other entities from the sale prior to paying Plaintiff and did not notify Plaintiff of the sale. The alleged representations occurred after Plaintiff had made the loans to Defendants. As a result, the alleged representations could not have been used to induce Plaintiff to extend credit.

However, Plaintiff may be able to allege a claim under § 523(a)(2)(A) based on forbearance if Plaintiff is able to amend the Complaint to sufficiently allege damages proximately caused by the alleged representations that induced Plaintiff to forbear. "A creditor's decision to forbear is not actionable under § 523(a)(2)(A) unless the debtor induced the forbearance by making a false representation," *In re Paddock*, 533 B.R. 798, 806 (Bankr. D. Mont. 2015) (citing *In re Daniell*, 2013 WL 5933657, at \*9-10 (B.A.P. 9th Cir. Nov. 6, 2013)), or by false pretenses or actual fraud, including

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

Asif Sheikh

Chapter 7

fraudulent concealment. *In re Escoto*, 2015 WL 2343461, at \*6-8 (B.A.P. 9th Cir. May 15, 2015); *see also Husky Int'l Elecs, Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016).

"[I]n order to prevail on a § 523(a)(2)(A) claim based on the creditor's forbearance, the creditor must prove, among other things, that at the time of the forbearance, 'it had valuable collection remedies.'" *Id.* (quoting *In re Kim*, 163 B.R. 157, 161 (B.A.P. 9th Cir. 1994), *aff'd and adopted*, 62 F.3d 1511 (9th Cir. 1995)); *see also In re Siriani*, 967 F.2d 302, 305 (9th Cir. 1992) (same holding under 11 U.S.C. § 523(a)(2)(B)).

"The creditor also must prove that 'those remedies lost value' during the time of forbearance. In short, the creditor proves proximate causation and damages only to the extent it shows that its remedies lost value during the forbearance period." *Id.* (quoting *Kim*, 163 B.R. at 161).

For example, in *Escoto*, the debtor obtained a loan by the creditor to fund litigation against a third party. *Escoto*, 2015 WL 2343461 at \*1. The note was due on demand, on settlement of the litigation against the third party or within three years of its execution, whichever came earlier. *Id.* The debtor settled with the third party, but, despite numerous interactions with the creditor, did not disclose the settlement to the creditor. *Id.* Instead, the debtor asked for an extension of time to repay the loan, and the creditor agreed to an extension of time. *Id.*, at \*2.

Subsequently, the debtor filed a chapter 7 petition and the creditor learned about the settlements. *Id.* The creditor filed a complaint requesting nondischargeability of the debt owed to it under § 523(a)(2)(A). *Id.* After trial, the bankruptcy court held that the creditor failed to establish that the debtor possessed valuable collection remedies at the time of the extension agreement, and that those remedies lost value during the renewal period. *Id.*, at \*3. On appeal, the BAP affirmed the bankruptcy court's holding, noting that:

Identifying funds to which [the debtor] may have had access is insufficient. *Siriani* requires a creditor to demonstrate the existence of valuable collection remedies at a specific point in time. By simply pointing to evidence of certain funds, [the creditor] did not necessarily place these funds in [the debtor's] possession at the time the extension agreement was entered into or during the extension period.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

Asif Sheikh

Chapter 7

...

A second defect with [the creditor's] argument is that placing assets or funds in [the debtor's] possession at the relevant time does not end the proximate cause analysis. In addition to identifying the existence of remedies, *Siriani* requires a creditor to show a reduction in the value of such remedies during a specific period of time. Assuming [the debtor] possessed funds or available assets at the requisite point in time, [the creditor] did not present any evidence that these funds or assets were dissipated during the extension period.

*Id.*, at \*5-6. The BAP also held, however, that the bankruptcy court erred by limiting its analysis to the time after the creditor agreed to an extension of time for repayment. *Id.*, at \*6-7. The BAP, relying on a First Circuit Court of Appeals decision, stated:

[The creditor's] final argument calls into question the timing of [the debtor's] fraudulent conduct as determined by the bankruptcy court. According to [the creditor], [the debtor's] failure to disclose the settlements fraudulently induced [the creditor] to effectively forbear from immediately demanding repayment of the loan and that this forbearance amounted to an extension of credit. Because the forbearance predates the extension agreement, [the creditor] submits that the bankruptcy court should have applied the proximate cause analysis beginning on the date of settlement, rather than focusing solely on the date [the creditor] voluntarily agreed to extend the loan. [The creditor] posits that such an analysis would have satisfied the *Siriani* requirements since [the debtor's] fraudulent omissions and depletion of the settlement proceeds allegedly denied [the creditor] the opportunity to collect from those monies.

...

This Panel agrees with the First Circuit's reasoning and considers it appropriate to apply the First Circuit's holding to the facts of this case. [The debtor's] settlement of the construction defect litigation triggered [the creditor's] right to immediate repayment of [the debtor's] debt. [The debtor's] concealment deprived [the creditor] of the ability to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Asif Sheikh**

**Chapter 7**

exercise that right, and [the debtor] thereby effectively procured a forbearance. The fact that [the debtor] obtained the forbearance without [the creditor's] knowledge serves to further illustrate the surreptitious nature of the fraud. [The debtor] should not be permitted to benefit from an overly narrow definition of the term "extension" that is disconnected from the statute that informs its meaning. As the First Circuit stated in *Field v. Mans*, "[i]t is no great leap to say that fraudulent concealment and frustration of [the creditor's] acceleration right was tantamount to an 'extension' ... of the existing credit." *Id.* Thus, the Panel concludes that [the debtor's] concealment of the settlement(s) resulted in an extension of credit for purposes of § 523(a)(2).

*Id.*, at \*6-8 (citing *Field v. Mans*, 157 F.3d 35, 45-46 (1st Cir. 1998)).

Similarly, in *In re Licursi*, 573 B.R. 786 (Bankr. C.D. Cal. 2017), Alliance Bank ("Alliance") and Spectrum Glass & Aluminum ("Spectrum Aluminum") entered into a business loan agreement, whereby Alliance loaned Spectrum Aluminum, an entity owned by one of the debtors, \$393,892. *Licursi*, 573 B.R. at 790. On the same day, the debtors executed a commercial guaranty of the loan agreement. *Id.* Alliance also obtained a security interest in Spectrum Aluminum's collateral. *Id.*, at 790-91.

Subsequently, California Bank & Trust ("CB&T") acquired Alliance's assets. *Id.*, at 791. Spectrum Aluminum then defaulted under the terms of the loan agreement. *Id.* As a result, CB&T filed a complaint against Spectrum Aluminum and the debtors. *Id.* The debtors then dissolved Spectrum Aluminum, created a new entity called Spectrum Glass & Mirror ("Spectrum Mirror") and transferred all of Spectrum Aluminum's assets to Spectrum Mirror. *Id.*, at 791-92. As part of the transfer, Spectrum Mirror paid approximately \$25,715 for the assets by paying some of Spectrum Aluminum's creditors. *Id.*, at 792. The debtors concealed this information from CB&T. *Id.*, at 792-93. The debtors also continued to send communications to CB&T on behalf of Spectrum Aluminum, giving the impression that Spectrum Aluminum was still doing business. *Id.*, at 793. Upon learning about the existence of Spectrum Mirror, CB&T filed a complaint against Spectrum Mirror and demanded that Spectrum Mirror deliver its collateral to CB&T to satisfy the debt owed to CB&T by the debtors and Spectrum Aluminum. *Id.*, at 795.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT... Asif Sheikh

Chapter 7

After the debtors filed a chapter 7 petition, CB&T filed a complaint requesting nondischargeability of the debt owed it pursuant to, among other subsections, § 523(a)(2)(A). *Id.* According to CB&T, the debtors' misrepresentations regarding Spectrum Aluminum and the transfer of its assets to Spectrum Mirror caused CB&T to sustain significant losses, including costs of litigation to pursue its claims against Spectrum Aluminum and Spectrum Mirror. *Id.* In assessing CB&T's claim under § 523(a)(2)(A), the bankruptcy court held:

Section 523(a)(2)(A) renders nondischargeable a debt for money "to the extent obtained by" misrepresentation, fraudulent omission, or deceptive conduct. The operative phrase here is "to the extent obtained by." This certainly applies when the prescribed conduct occurred before the debtor receives the money. *Hopper v. Lewis (In re Lewis)*, 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016). But it also applies if the action of the creditor is to forebear in its collection of the debt. This, too, can be seen as an extension of credit. *Field v. Mans*, 157 F.3d 35 (1st Cir. 1998).

...

The Court must look to the text of Section 523(a)(2)(A) as the starting point for analysis and for the basis of this decision. *Field v. Mans*, 157 F.3d 35, 43 (1st Cir. 1998); *citing Shawmut Bank, N.A. v. Goodrich (In re Goodrich)*, 999 F.2d 22, 24 (1st Cir. 1993). In *Mans*, the First Circuit looked at the meaning of the word "extension" in Section 523(a)(2)(A). The First Circuit found that the word "extension" has at least two meanings. The meaning that the First Circuit found acceptable and relevant to the *Mans* case is a meaning this Court finds relevant to the instant case. The First Circuit noted that an extension may be an "increase in length of time" or "an agreement on or concession of additional time (as for meeting an overdue debt or fulfilling a legal formality)." *Id.*

Here the Court finds that Defendants failed to (1) inform CB & T of the Asset Purchase Agreement between Spectrum Aluminum and Spectrum Mirror in February 2010; (2) inform CB & T of the transfer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Asif Sheikh**

**Chapter 7**

of the Spectrum Aluminum assets to Spectrum Mirror in April 2010; and (3) inform CB & T that Spectrum Aluminum was no longer operating in July 2010. This caused CB & T to delay exercising its rights under the Loan Agreement. This constitutes an extension of credit since—but for Defendants' failure to fully disclose and their misrepresentations—CB & T could have withdrawn the credit previously extended, terminated the agreement and may also have sought recourse from Spectrum Mirror sooner rather than waiting until October 2013. Beyond that, CB & T could have demanded that the \$25,000+ paid by Spectrum Mirror be paid to CB & T rather than to the unsecured creditors of Spectrum Aluminum, thus reducing the outstanding balance on its loan.

*Id.*, at 799-800.

Here, Plaintiff has alleged that Defendants made misrepresentations when they informed Plaintiff that they would repay Plaintiff through the Fatburger sale if Plaintiff agreed not to pursue collection because of Defendants' default, such as by cashing the alleged prepayment checks. Plaintiff also alleged that she relied on Defendants' representations regarding the sale and did not take further action to collect from Defendants. However, Plaintiff has not alleged any damages proximately caused by the forbearance. To sufficiently allege a claim under § 523(a)(2)(A) on a theory of forbearance, Plaintiff must allege that she had valuable collection remedies at the time of forbearance, and that those remedies lost value during the time of forbearance. The Complaint does not include any such allegations. Consequently, the Court will dismiss Plaintiff's claim under § 523(a)(2)(A) with leave to amend.

***C. Rule 12(f)***

Pursuant to Rule 12(f), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Here, Defendants request the Court strike paragraphs 7, 23-27 and 46-51 (paragraphs 23-27 and 46-51 are identical). As to paragraph 7, Defendants assert that the allegation is immaterial to the Complaint. However, Plaintiff's age may be relevant to her reliance on Defendants for purposes of § 523(a)(2)(A). As to paragraphs 23-27 and 46-51, Defendants argue that the paragraphs are immaterial and defamatory. However, these



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Asif Sheikh**

**Chapter 7**

allegations pertain to Defendants' motive and pattern, and may be relevant to Plaintiff's claim under § 523(a)(2)(A).

If Plaintiff elects to amend the Complaint, the Court will not strike these allegations from a future amended complaint. If Plaintiff elects to proceed only as to Plaintiff's claim under § 727(a)(4), the Court will strike the allegations as immaterial to Plaintiff's denial of discharge claim.

***D. Rule 12(d)***

Defendants request that the Court treat the Motion as a motion for summary judgment pursuant to Rule 12(d). Pursuant to Rule 12(d)—

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.

Courts have discretion not to convert Rule 12(b)(6) motions to motions for summary judgment. *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1207 (9th Cir. 2007); *see also Yakima Valley Mem'l Hosp. v. Washington State Dep't of Health*, 654 F.3d 919, 925 n.6 (9th Cir. 2011). If a court decides to consider matters outside the pleadings, the court "must notify the parties before taking such action, in order to provide the parties a fair opportunity to present material relevant to summary judgment." *In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 781 (9th Cir. 2014).

The Court will not convert the Motion to a motion for summary judgment. First, the extrinsic evidence offered by Defendants does not warrant judgment in favor of either party at this time. There remain genuine issues of material fact as to each of the elements under § 523(a)(2)(A). Next, even if the Court decided to treat the Motion as a motion for summary judgment, the Court would have to provide Plaintiff an opportunity to rebut Defendants' evidence and provide her own evidence. Rather than require the parties to expend time and resources litigating a motion for summary judgment at this time, the Court will allow Plaintiff an opportunity to amend the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Asif Sheikh**

**Chapter 7**

Complaint so the Court may first assess if Plaintiff is able to state a claim under § 523(a)(2)(A). Because the Court will not consider the extrinsic evidence at this time, the Court will strike the Sheikh Declaration.

**III. CONCLUSION**

The Court will dismiss Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) with leave to amend. If Plaintiff elects to amend the Complaint, the Court will deny Defendants' request to strike the allegations. If Plaintiff decides not to amend the Complaint, the Court will strike the allegations specified by Defendants. The Court denies Defendants' request to convert the Motion to a motion for summary judgment.

Defendants must submit an order within seven (7) days. If Plaintiff elects to amend the Complaint, Plaintiff must file an amended complaint within **14 days** of entry of an order on the Motion. If Plaintiff does not amend the Complaint, Defendants must file and serve a response to the Complaint within **21 days** of entry of the order on the Motion.

**Party Information**

**Debtor(s):**

Asif Sheikh

Represented By  
Steven M Gluck

**Defendant(s):**

Asif Sheikh

Represented By  
Steven M Gluck

Sajida Sheikh

Pro Se

**Joint Debtor(s):**

Sajida Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

---

2:30 PM

**CONT... Asif Sheikh**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**1:18-11470 Asif Sheikh**

**Chapter 7**

Adv#: 1:18-01094 Karimzad v. Sheikh et al

**#15.00** Status conference re: complaint to determine dischargeability  
and in objection to discharge  
[11 U.S.C. sec 727(a)(4)(A); 523(a)(2)]

fr. 10/17/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **1:30 p.m. on January 23, 2019**. The parties must file a joint status report in accordance with Local Bankruptcy Rule 7016-1 no later than January 9, 2019.

**10/17/2018 Tentative:**

In their joint status report, the parties indicate that they would like to mediate this matter. The parties should be prepared to discuss their availability for mediation, whether they prefer mediating prior to the Court's adjudication of the defendants' motion to dismiss and whether the parties are willing to attend a global mediation with the parties involved in the related adversary proceeding entitled *Karimzad v. Sheik*, 1:18-ap-01096-VK.

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/14/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Asif Sheikh**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Asif Sheikh

Represented By  
Steven M Gluck

**Defendant(s):**

Asif Sheikh

Pro Se

Sajida Sheikh

Pro Se

**Joint Debtor(s):**

Sajida Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**1:18-11471 Atif Sheikh**

**Chapter 7**

Adv#: 1:18-01096 Karimzad v. Sheikh et al

**#16.00** Defendants motion to dismiss adversary complaint or in the alternative for a more definite statement and motion to strike immaterial and scanalous allegations Fed. Rule 12(b)(6),(e),(f)

Docket 4

**Tentative Ruling:**

Grant in part and deny in part.

**I. BACKGROUND**

On June 9, 2018, Atif Sheikh and Naureen Sheikh ("Defendants") filed a voluntary chapter 7 petition. On August 14, 2018, Molouk Karimzad ("Plaintiff") filed a complaint against Defendants (the "Complaint"), requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2)(A) and objecting to Defendants' discharge under 11 U.S.C. § 727(a)(4). In relevant part, the Complaint includes the following allegations:

Plaintiff was a dependent adult for purposes of the California Elder Abuse Law at the time of the relevant events. Defendants approached Plaintiff and asked her to loan them money in exchange for a proposed interest rate. Defendants prepared the loan documents and assured Plaintiff she would be paid. When Defendants sought the loan from Plaintiff, they brought with them one of Plaintiff's trusted friends and convinced Plaintiff that Defendant also had obtained a loan that Defendants repaid from Plaintiff's friend.

On November 9, 2012, Plaintiff and Defendants entered into a written agreement whereby Plaintiff loaned \$50,000 to Defendants at an interest rate of 12% per annum, with interest only payments of \$500 per month from December 2012 through May 9, 2013. The agreement called for payment of the principal debt in full on or before June 9, 2013.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Atif Sheikh**

**Chapter 7**

On December 18, 2012, Plaintiff and Defendants entered into another written agreement whereby Plaintiff loaned another \$50,000 to Defendants at an interest rate of 12% per annum, with interest only payments of \$500 per month from December 2012 through December 2013. This agreement called for payment of the principal debt in full on or before December 2013.

On February 13, 2013, Plaintiff and Defendants entered into a third agreement whereby Plaintiff loaned Defendants \$25,000 at an interest rate of 24% per annum, with interest only payments of \$500 per month from July 2013 through November 2013. The agreement called for payment of the principal debt in full on or before December 10, 2013.

Defendants provided "final repayment checks" of \$50,000 for the first two agreements. However, while Defendants initially paid interest payments, they thereafter did not abide by the agreements. In October 2014, Plaintiff notified Defendants of their default and demanded payment. Defendants instructed Plaintiff not to cash their prepayment checks and promised they would resume paying interest.

Defendants also represented to Plaintiff that they were going to sell their business, a Fatburger franchise (the "Fatburger"). Defendants told Plaintiff that, when the Fatburger sold, Defendants would pay Plaintiff in full. Based on Defendants' representations, Plaintiff agreed to modifying the agreements. From October 2014 through February 2017, Defendants continued to indicate that once the Fatburger sold they would pay off the loans in full.

Defendants concealed from Plaintiff that they had many other loans they were obligated to repay from the sale of the Fatburger. In February 2017, Plaintiff learned that Defendants sold the Fatburger, but intentionally did not notify Plaintiff of the sale. Plaintiff was never paid from the proceeds of the sale.

Defendants engaged in a pattern of conduct seeking elderly people for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Atif Sheikh**

**Chapter 7**

money to finance their business projects and extravagant lifestyles. On June 27, 2017, Plaintiff filed a lawsuit against Defendants in state court, asserting causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation and elder abuse.

In addition, Defendants failed to schedule their interest in Black Diamond Food Group 1, LLC and Black Diamond Food Group 2, LLC. The omission was a deliberate omission of a material matter constituting a false oath, and Defendants failed to disclose these assets with the intent to mislead creditors and the trustee as to Defendants' true financial condition, or with reckless disregard for the truth.

Complaint, pp. 2-7.

On September 6, 2018, Defendants filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. In the Motion, Defendants assert that Plaintiff did not sufficiently plead causation. Defendants also request that the Court strike paragraphs 7, 23-27 and 46-51 as immaterial or scandalous. In addition, Defendants attached a declaration by Mr. Sheikh (the "Sheikh Declaration") and several exhibits. On November 2, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 9], asserting that Plaintiff has sufficiently alleged a claim under § 523(a)(2)(A). Plaintiff also requests that the Court strike the Sheikh Declaration, on the basis that the Sheikh Declaration is extrinsic evidence that is improper for consideration in a motion under Federal Rule of Civil Procedure ("Rule") 12(b)(6). On November 13, 2018, Defendants filed a reply to the Opposition [doc. 13], requesting that the Court consider the Sheikh Declaration and treat the Motion as a motion for summary judgment.

## **II. ANALYSIS**

### ***A. Rule 12(b)(6)***

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts 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



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Atif Sheikh**

**Chapter 7**

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.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party.

Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

*Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). "A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Atif Sheikh**

**Chapter 7**

misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

***B. 11 U.S.C. § 523(a)(2)(A)***

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

For purposes of 11 U.S.C. § 523(a)(2)(A), "[t]he alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt." *In re Lee*, 536 B.R. 848, 855 (Bankr. N.D. Cal. 2015) (citing *In re Boyajian*, 367 B.R. 138, 147

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Atif Sheikh**

**Chapter 7**

(B.A.P. 9th Cir. 2007), *aff'd*, 564 F.3d 1088 (9th Cir. 2009)). As explained by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"):

For purposes of § 523(a)(2), however, the timing of the fraud and the elements to prove fraud focus on the time when the lender ... made the extension of credit to the Debtor. In other words, the assignee of the Agreement ... steps into the shoes of its assignor ..., and the inquiry of whether a creditor justifiably relied on Debtor's alleged misrepresentations is focused on the moment in time when that creditor extended the funds to Debtor. *See McClellan v. Cantrell*, 217 F.3d 890, 896 (7th Cir. 2000) (Ripple, Circuit Judge, concurring) (noting Congress' use of "obtained by" in § 523(a)(2) "clearly indicates that fraudulent conduct occurred at the inception of the debt, i.e. the debtor committed a fraudulent act to induce the creditor to part with his money or property.").

*Boyajian*, 367 B.R. at 147 (citing *In re Dobek*, 278 B.R. 496, 508 (Bankr. N.D. Ill. 2002)).

Here, Plaintiff's claim under § 523(a)(2)(A) is based on the allegation that Defendants convinced Plaintiff not to collect on the defaulted debt, such as by cashing prepayment checks, by representing to Plaintiff that they would repay the loans from the sale of the Fatburger. Plaintiff further alleges that Defendants concealed that they were obligated to pay other entities from the sale prior to paying Plaintiff and did not notify Plaintiff of the sale. The alleged representations occurred after Plaintiff had made the loans to Defendants. As a result, the alleged representations could not have been used to induce Plaintiff to extend credit.

However, Plaintiff may be able to allege a claim under § 523(a)(2)(A) based on forbearance if Plaintiff is able to amend the Complaint to sufficiently allege damages proximately caused by the alleged representations that induced Plaintiff to forbear. "A creditor's decision to forbear is not actionable under § 523(a)(2)(A) unless the debtor induced the forbearance by making a false representation," *In re Paddock*, 533 B.R. 798, 806 (Bankr. D. Mont. 2015) (citing *In re Daniell*, 2013 WL 5933657, at \*9-10 (B.A.P. 9th Cir. Nov. 6, 2013)), or by false pretenses or actual fraud, including fraudulent concealment. *In re Escoto*, 2015 WL 2343461, at \*6-8 (B.A.P. 9th Cir.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Atif Sheikh**

**Chapter 7**

May 15, 2015); *see also Husky Int'l Elecs, Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016).

"[I]n order to prevail on a § 523(a)(2)(A) claim based on the creditor's forbearance, the creditor must prove, among other things, that at the time of the forbearance, 'it had valuable collection remedies.'" *Id.* (quoting *In re Kim*, 163 B.R. 157, 161 (B.A.P. 9th Cir. 1994), *aff'd and adopted*, 62 F.3d 1511 (9th Cir. 1995)); *see also In re Siriani*, 967 F.2d 302, 305 (9th Cir. 1992) (same holding under 11 U.S.C. § 523(a)(2)(B)). "The creditor also must prove that 'those remedies lost value' during the time of forbearance. In short, the creditor proves proximate causation and damages only to the extent it shows that its remedies lost value during the forbearance period." *Id.* (quoting *Kim*, 163 B.R. at 161).

For example, in *Escoto*, the debtor obtained a loan by the creditor to fund litigation against a third party. *Escoto*, 2015 WL 2343461 at \*1. The note was due on demand, on settlement of the litigation against the third party or within three years of its execution, whichever came earlier. *Id.* The debtor settled with the third party, but, despite numerous interactions with the creditor, did not disclose the settlement to the creditor. *Id.* Instead, the debtor asked for an extension of time to repay the loan, and the creditor agreed to an extension of time. *Id.*, at \*2.

Subsequently, the debtor filed a chapter 7 petition and the creditor learned about the settlements. *Id.* The creditor filed a complaint requesting nondischargeability of the debt owed to it under § 523(a)(2)(A). *Id.* After trial, the bankruptcy court held that the creditor failed to establish that the debtor possessed valuable collection remedies at the time of the extension agreement, and that those remedies lost value during the renewal period. *Id.*, at \*3. On appeal, the BAP affirmed the bankruptcy court's holding, noting that:

Identifying funds to which [the debtor] may have had access is insufficient. *Siriani* requires a creditor to demonstrate the existence of valuable collection remedies at a specific point in time. By simply pointing to evidence of certain funds, [the creditor] did not necessarily place these funds in [the debtor's] possession at the time the extension agreement was entered into or during the extension period.

...

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

Atif Sheikh

Chapter 7

A second defect with [the creditor's] argument is that placing assets or funds in [the debtor's] possession at the relevant time does not end the proximate cause analysis. In addition to identifying the existence of remedies, *Siriani* requires a creditor to show a reduction in the value of such remedies during a specific period of time. Assuming [the debtor] possessed funds or available assets at the requisite point in time, [the creditor] did not present any evidence that these funds or assets were dissipated during the extension period.

*Id.*, at \*5-6. The BAP also held, however, that the bankruptcy court erred by limiting its analysis to the time after the creditor agreed to an extension of time for repayment. *Id.*, at \*6-7. The BAP, relying on a First Circuit Court of Appeals decision, stated:

[The creditor's] final argument calls into question the timing of [the debtor's] fraudulent conduct as determined by the bankruptcy court. According to [the creditor], [the debtor's] failure to disclose the settlements fraudulently induced [the creditor] to effectively forbear from immediately demanding repayment of the loan and that this forbearance amounted to an extension of credit. Because the forbearance predates the extension agreement, [the creditor] submits that the bankruptcy court should have applied the proximate cause analysis beginning on the date of settlement, rather than focusing solely on the date [the creditor] voluntarily agreed to extend the loan. [The creditor] posits that such an analysis would have satisfied the *Siriani* requirements since [the debtor's] fraudulent omissions and depletion of the settlement proceeds allegedly denied [the creditor] the opportunity to collect from those monies.

...

This Panel agrees with the First Circuit's reasoning and considers it appropriate to apply the First Circuit's holding to the facts of this case. [The debtor's] settlement of the construction defect litigation triggered [the creditor's] right to immediate repayment of [the debtor's] debt. [The debtor's] concealment deprived [the creditor] of the ability to exercise that right, and [the debtor] thereby effectively procured a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Atif Sheikh**

**Chapter 7**

forbearance. The fact that [the debtor] obtained the forbearance without [the creditor's] knowledge serves to further illustrate the surreptitious nature of the fraud. [The debtor] should not be permitted to benefit from an overly narrow definition of the term "extension" that is disconnected from the statute that informs its meaning. As the First Circuit stated in *Field v. Mans*, "[i]t is no great leap to say that fraudulent concealment and frustration of [the creditor's] acceleration right was tantamount to an 'extension' ... of the existing credit." *Id.* Thus, the Panel concludes that [the debtor's] concealment of the settlement(s) resulted in an extension of credit for purposes of § 523(a)(2).

*Id.*, at \*6-8 (citing *Field v. Mans*, 157 F.3d 35, 45-46 (1st Cir. 1998)).

Similarly, in *In re Licursi*, 573 B.R. 786 (Bankr. C.D. Cal. 2017), Alliance Bank ("Alliance") and Spectrum Glass & Aluminum ("Spectrum Aluminum") entered into a business loan agreement, whereby Alliance loaned Spectrum Aluminum, an entity owned by one of the debtors, \$393,892. *Licursi*, 573 B.R. at 790. On the same day, the debtors executed a commercial guaranty of the loan agreement. *Id.* Alliance also obtained a security interest in Spectrum Aluminum's collateral. *Id.*, at 790-91.

Subsequently, California Bank & Trust ("CB&T") acquired Alliance's assets. *Id.*, at 791. Spectrum Aluminum then defaulted under the terms of the loan agreement. *Id.* As a result, CB&T filed a complaint against Spectrum Aluminum and the debtors. *Id.* The debtors then dissolved Spectrum Aluminum, created a new entity called Spectrum Glass & Mirror ("Spectrum Mirror") and transferred all of Spectrum Aluminum's assets to Spectrum Mirror. *Id.*, at 791-92. As part of the transfer, Spectrum Mirror paid approximately \$25,715 for the assets by paying some of Spectrum Aluminum's creditors. *Id.*, at 792. The debtors concealed this information from CB&T. *Id.*, at 792-93. The debtors also continued to send communications to CB&T on behalf of Spectrum Aluminum, giving the impression that Spectrum Aluminum was still doing business. *Id.*, at 793. Upon learning about the existence of Spectrum Mirror, CB&T filed a complaint against Spectrum Mirror and demanded that Spectrum Mirror deliver its collateral to CB&T to satisfy the debt owed to CB&T by the debtors and Spectrum Aluminum. *Id.*, at 795.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT... Atif Sheikh

Chapter 7

After the debtors filed a chapter 7 petition, CB&T filed a complaint requesting nondischargeability of the debt owed it pursuant to, among other subsections, § 523(a)(2)(A). *Id.* According to CB&T, the debtors' misrepresentations regarding Spectrum Aluminum and the transfer of its assets to Spectrum Mirror caused CB&T to sustain significant losses, including costs of litigation to pursue its claims against Spectrum Aluminum and Spectrum Mirror. *Id.* In assessing CB&T's claim under § 523(a)(2)(A), the bankruptcy court held:

Section 523(a)(2)(A) renders nondischargeable a debt for money "to the extent obtained by" misrepresentation, fraudulent omission, or deceptive conduct. The operative phrase here is "to the extent obtained by." This certainly applies when the prescribed conduct occurred before the debtor receives the money. *Hopper v. Lewis (In re Lewis)*, 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016). But it also applies if the action of the creditor is to forebear in its collection of the debt. This, too, can be seen as an extension of credit. *Field v. Mans*, 157 F.3d 35 (1st Cir. 1998).

...

The Court must look to the text of Section 523(a)(2)(A) as the starting point for analysis and for the basis of this decision. *Field v. Mans*, 157 F.3d 35, 43 (1st Cir. 1998); *citing Shawmut Bank, N.A. v. Goodrich (In re Goodrich)*, 999 F.2d 22, 24 (1st Cir. 1993). In *Mans*, the First Circuit looked at the meaning of the word "extension" in Section 523(a)(2)(A). The First Circuit found that the word "extension" has at least two meanings. The meaning that the First Circuit found acceptable and relevant to the *Mans* case is a meaning this Court finds relevant to the instant case. The First Circuit noted that an extension may be an "increase in length of time" or "an agreement on or concession of additional time (as for meeting an overdue debt or fulfilling a legal formality)." *Id.*

Here the Court finds that Defendants failed to (1) inform CB & T of the Asset Purchase Agreement between Spectrum Aluminum and Spectrum Mirror in February 2010; (2) inform CB & T of the transfer of the Spectrum Aluminum assets to Spectrum Mirror in April 2010;

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT...

**Atif Sheikh**

**Chapter 7**

and (3) inform CB & T that Spectrum Aluminum was no longer operating in July 2010. This caused CB & T to delay exercising its rights under the Loan Agreement. This constitutes an extension of credit since—but for Defendants' failure to fully disclose and their misrepresentations—CB & T could have withdrawn the credit previously extended, terminated the agreement and may also have sought recourse from Spectrum Mirror sooner rather than waiting until October 2013. Beyond that, CB & T could have demanded that the \$25,000+ paid by Spectrum Mirror be paid to CB & T rather than to the unsecured creditors of Spectrum Aluminum, thus reducing the outstanding balance on its loan.

*Id.*, at 799-800.

Here, Plaintiff has alleged that Defendants made misrepresentations when they informed Plaintiff that they would repay Plaintiff through the Fatburger sale if Plaintiff agreed not to pursue collection because of Defendants' default, such as by cashing the alleged prepayment checks. Plaintiff also alleged that she relied on Defendants' representations regarding the sale and did not take further action to collect from Defendants. However, Plaintiff has not alleged any damages proximately caused by the forbearance. To sufficiently allege a claim under § 523(a)(2)(A) on a theory of forbearance, Plaintiff must allege that she had valuable collection remedies at the time of forbearance, and that those remedies lost value during the time of forbearance. The Complaint does not include any such allegations. Consequently, the Court will dismiss Plaintiff's claim under § 523(a)(2)(A) with leave to amend.

***C. Rule 12(f)***

Pursuant to Rule 12(f), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Here, Defendants request the Court strike paragraphs 7, 23-27 and 46-51 (paragraphs 23-27 and 46-51 are identical). As to paragraph 7, Defendants assert that the allegation is immaterial to the Complaint. However, Plaintiff's age may be relevant to her reliance on Defendants for purposes of § 523(a)(2)(A). As to paragraphs 23-27 and 46-51, Defendants argue that the paragraphs are immaterial and defamatory. However, these allegations pertain to Defendants' motive and pattern, and may be relevant to



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Atif Sheikh**

**Chapter 7**

Plaintiff's claim under § 523(a)(2)(A).

If Plaintiff elects to amend the Complaint, the Court will not strike these allegations from a future amended complaint. If Plaintiff elects to proceed only as to Plaintiff's claim under § 727(a)(4), the Court will strike the allegations as immaterial to Plaintiff's denial of discharge claim.

***D. Rule 12(d)***

Defendants request that the Court treat the Motion as a motion for summary judgment pursuant to Rule 12(d). Pursuant to Rule 12(d)—

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.

Courts have discretion not to convert Rule 12(b)(6) motions to motions for summary judgment. *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1207 (9th Cir. 2007); *see also Yakima Valley Mem'l Hosp. v. Washington State Dep't of Health*, 654 F.3d 919, 925 n.6 (9th Cir. 2011). If a court decides to consider matters outside the pleadings, the court "must notify the parties before taking such action, in order to provide the parties a fair opportunity to present material relevant to summary judgment." *In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 781 (9th Cir. 2014).

The Court will not convert the Motion to a motion for summary judgment. First, the extrinsic evidence offered by Defendants does not warrant judgment in favor of either party at this time. There remain genuine issues of material fact as to each of the elements under § 523(a)(2)(A). Next, even if the Court decided to treat the Motion as a motion for summary judgment, the Court would have to provide Plaintiff an opportunity to rebut Defendants' evidence and provide her own evidence. Rather than require the parties to expend time and resources litigating a motion for summary judgment at this time, the Court will allow Plaintiff an opportunity to amend the Complaint so the Court may first assess if Plaintiff is able to state a claim under §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

CONT... **Atif Sheikh**

**Chapter 7**

523(a)(2)(A). Because the Court will not consider the extrinsic evidence at this time, the Court will strike the Sheikh Declaration.

**III. CONCLUSION**

The Court will dismiss Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) with leave to amend. If Plaintiff elects to amend the Complaint, the Court will deny Defendants' request to strike the allegations. If Plaintiff decides not to amend the Complaint, the Court will strike the allegations specified by Defendants. The Court denies Defendants' request to convert the Motion to a motion for summary judgment.

Defendants must submit an order within seven (7) days. If Plaintiff elects to amend the Complaint, Plaintiff must file an amended complaint within **14 days** of entry of an order on the Motion. If Plaintiff does not amend the Complaint, Defendants must file a response to the Complaint within **21 days** of entry of the order on the Motion.

**Party Information**

**Debtor(s):**

Atif Sheikh

Represented By  
Steven M Gluck

**Defendant(s):**

Atif Sheikh

Represented By  
Steven M Gluck

Naureen Sheikh

Pro Se

**Joint Debtor(s):**

Naureen Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Atif Sheikh**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 21, 2018

Hearing Room 301

2:30 PM

**1:18-11471 Atif Sheikh**

**Chapter 7**

Adv#: 1:18-01096 Karimzad v. Sheikh et al

**#17.00** Status conference re: complaint to determine dischargeability  
and in objection to discharge  
[11 U.S.C. sec 727(a)(4)(A); 523(a)(2)]

fr. 10/17/18

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **1:30 p.m. on January 23, 2019**. The parties must file a joint status report in accordance with the Local Bankruptcy Rule 7016-1 no later than January 9, 2019.

**10/17/2018 Tentative:**

In their joint status report, the parties indicate that they would like to mediate this matter. The parties should be prepared to discuss their availability for mediation, whether they prefer mediating prior to the Court's adjudication of the defendants' motion to dismiss and whether the parties are willing to attend a global mediation with the parties involved in the related adversary proceeding entitled *Karimzad v. Sheik*, 1:18-ap-01094-VK.

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete one day of mediation: 12/14/18.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 21, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Atif Sheikh**

**Chapter 7**

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Atif Sheikh

Represented By  
Steven M Gluck

**Defendant(s):**

Atif Sheikh

Pro Se

Naureen Sheikh

Pro Se

**Joint Debtor(s):**

Naureen Sheikh

Represented By  
Steven M Gluck

**Plaintiff(s):**

Molouk Karimzad

Represented By  
Farbood Majd

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 27, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11900 Maryam Hadizadeh**

**Chapter 7**

**#1.00 Motion for relief from stay [AN]**

MONA SOLEIMANI AND DANNY PAVEHZADEH  
VS  
DEBTOR

fr. 10/10/18; 10/17/18; 11/21/18

Docket 15

**Tentative Ruling:**

**Tentative Ruling From 11/21/18**

On October 29, 2018, the Court entered an order assigning this matter to the mediation program [doc. 33]. What is the status of the parties' participation in mediation?

**Tentative Ruling From 10/10/18**

Apparently, the validity of the quitclaim deed at issue is being challenged, and that dispute is pending before the state court. What is the status of the movants' preparation to try this matter in state court? Would it be possible for this Court to adjudicate that issue in or before December 2018?

If this Court grants relief from the automatic stay for the state court to determine only this issue, *i.e.*, the validity of the quitclaim deed, why can't the chapter 7 trustee represent and litigate the interest of the debtor's bankruptcy estate in the real property (if any) in the state court?

In light of the expense of litigating this issue, are the movants and the chapter 7 trustee willing to participate in the Court's mediation program, in an attempt to resolve this dispute consensually?

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, November 27, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Maryam Hadizadeh**

**Chapter 7**

**Party Information**

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

Adv#: 1:15-01083 Fox et al v. Barreca

**#1.00** Motion for award of attorneys' fees

fr. 11/14/18

Docket 300

**Tentative Ruling:**

For the reasons discussed below, the Court will deny the motion.

**I. BACKGROUND**

Gerson Fox is a real estate investor who funded investments proposed by Michael Kamen, his longtime business associate. [FN1]. These investments took the form of several single entity limited liability companies or limited partnerships (collectively, the "SPEs"). At least some of the SPEs had ownership interest in commercial real properties. Mr. Fox would fund the SPEs by providing funds from his personal accounts. Mr. Kamen's property management company Mika Realty Group, LLC ("Mika"), oversaw the real properties owned by the SPEs.

One of the SPEs was Broadway/Workman, LLC ("Broadway"), which owned a CVS drugstore-anchored retail property. On November 30, 2006, Mika and Broadway entered into a property management agreement (the "Agreement") [doc. 302, Exh. A]. The Agreement was signed *only* by Mr. Kamen on behalf of both parties. *Id.* In relevant part, the Agreement provides:

9. Attorneys' Fees. Should either *party* employ attorneys to *enforce any of the provisions hereof*, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith.

Agreement, ¶ 9 (emphasis added).

In the summer of 2006, Mr. Kamen and Mr. Fox offered, and Ernest Charles Barreca ("Defendant") accepted, the position of chief operating officer of Mika. As COO of



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

Mika, Defendant's responsibilities included the day-to-day operation of all aspects of Mika, including overseeing the property management, ongoing development activities, property maintenance, financing obligations, and reviewing and presenting potential acquisition opportunities to Mr. Kamen, who would then decide whether to bring the opportunities to Mr. Fox.

On October 1, 2006, Defendant began working at Mika. At some point between October 2006 and March 2011, Defendant became the chief executive officer of Mika. Defendant's job duties did not change at Mika after he became CEO.

On October 28, 2011, many of the SPEs sued Defendant and others in the Superior Court of California, alleging numerous causes of action, including fraud, conversion, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty (the "October 2011 Case"). On October 30, 2013, the Superior Court dismissed the October 2011 Case against Defendant with prejudice.

On April 18, 2013, Mr. Fox and Gertrude Fox (together, "Plaintiffs") sued in Superior Court, asserting fifteen causes of action (the "April 2013 Case"). On July 8, 2014, the state court entered default judgment against Defendant and in favor of Plaintiffs in the April 2013 Case (the "Default Judgment"). On August 26, 2014, Defendant filed a motion to vacate the Default Judgment (the "Motion to Vacate"), which the Superior Court denied on grounds that it lacked jurisdiction to hear the Motion to Vacate. On May 10, 2018, the California Court of Appeal reversed the Superior Court and remanded the proceeding, directing the Superior Court to rule on the merits of the Motion to Vacate.

On February 13, 2015, Defendant filed a voluntary chapter 7 petition, commencing case no. 1:15-bk-10466-VK. On February 23, 2015, Defendant filed his schedules [1:15-bk-10466-VK, doc. 10]. In his Schedule F, Defendant listed an unsecured nonpriority claim for \$7,958,612.00 owed to Gerson Fox, which Defendant indicated stemmed from a lawsuit.

On May 15, 2015, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them under 11 U.S.C. §§ 523(a)(4) and (a)(6), commencing the adversary proceeding. On July 27, 2015, Plaintiffs filed a first amended complaint (the "FAC") [doc. 12], which is the operative complaint, and added claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(2)(B). In the FAC, Plaintiffs included a prayer for relief for reasonable attorneys' fees. *Id.*, at 37. The Plaintiffs did

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

not identify a contractual or statutory basis for this relief.

On February 5, 2018, the parties filed their joint pretrial stipulation (the "JPS") [doc. 145]. Throughout the JPS, Defendant argued that he was merely an employee of Mika, which was owned and operated by Mr. Kamen and Mr. Fox. *Id.*, at 2-74. He also contended that Mika was not a party to the adversary proceeding. *Id.* The JPS does not make any reference to the attorney's fees provision in the Agreement.

On May 29-June 1, 2018 and June 4, 2018, the Court held trial in this matter. For the reasons set forth in the trial ruling [doc. 291], on August 29, 2018, the Court entered judgment in favor of Defendant under 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6) [doc. 292].

On September 12, 2018, Defendant filed a motion requesting attorneys' fees and costs pursuant to Cal. Civ. Code § 1717 and/or Cal. Code of Civ. Proc. ("CCP") §§ 1021 and 1032 (the "Motion") [doc. 300]. On October 31, 2018, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 313]. On November 7, 2018, Defendant filed a reply to the Opposition [doc. 318].

## II. DISCUSSION

In federal courts, there generally is no right to attorneys' fees unless authorized by contract or by statute. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257, 95 S.Ct. 1612, 1621, 44 L.Ed.2d 141 (1975) ("Other recent cases have also reaffirmed the general rule that, absent statute or enforceable contract, litigants pay their own attorneys' fees."). In *Cohen v. de la Cruz*, 523 U.S. 213, 218–20, 118 S.Ct. 1212, 1216–17, 140 L.Ed.2d 341 (1998), the Supreme Court of the United States interpreted the discharge exceptions under 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(9) to encompass all liability arising on account of a debtor's fraudulent conduct, including attorneys' fees and costs to which the creditors were entitled under state law. As such, "the determinative question for awarding attorneys' fees is whether the creditor would be able to recover the fee outside of bankruptcy under state or federal law." *In re Hung Tan Pham*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000). Here, Defendant cites Cal. Civ. Code § 1717 and CCP § 1032 as the operative state statutes.

### A. Cal. Civ. Code § 1717(a)

Pursuant to Cal. Civ. Code § 1717(a)—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

"Civil Code § 1717 makes an otherwise unilateral contractual obligation to pay attorney's fees into a reciprocal one in an action on the contract but Civil Code § 1717 is not applicable in a tort action." *In re Bic Pho*, 2016 WL 1620375, at \*3 (Bankr. N.D. Cal. Apr. 20, 2016); *see also Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998) (holding that § 1717 applies only to fees incurred to litigate contract claims); and *In re Deuel*, 482 B.R. 323, 328 (Bankr. S.D. Cal. 2012) (same).

To obtain fees pursuant to Cal. Civ. Code § 1717(a), "[t]hree conditions must be met...." *In re Penrod*, 802 F.3d 1084, 1087 (9th Cir. 2015).

First, the action in which the fees are incurred must be an action "on a contract," a phrase that is liberally construed. Second, the contract must contain a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must be the party who "prevail[ed] on the contract," meaning (with exceptions not relevant here) "the party who recovered a greater relief in the action on the contract." Cal. Civ.Code § 1717(b)(1).

*Id.*, at 1087-88 (internal citation omitted). "Under California law, an action is 'on a contract' when a party seeks to enforce, or avoid enforcement of, the provisions of the contract." *Id.*, at 1088.

***1. California Law Does Not Allow for Recovery of Attorneys' Fees when Neither Party was a Signatory on the Contract***

In the Motion, Defendant argues that the Agreement between Mika and Broadway specifically contains an attorneys' fees clause, providing reasonable fees to the prevailing party, which was activated upon Plaintiffs filing the adversary proceeding.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

Defendant contends that he was the prevailing party in this adversary proceeding, and therefore, is entitled to an award of attorneys' fees.

"Generally, 'attorney's fees are awarded only when the ... lawsuit is between signatories to the contract.'" *Nicholson v. Thrifty Payless, Inc.*, 700 F. App'x 615, 617–18 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1263, 200 L. Ed. 2d 417 (2018) (quoting *Real Prop. Servs. Corp. v. City of Pasadena*, 25 Cal. App. 4th 375, 30 Cal.Rptr.2d 536, 539 (1994)). "Under some circumstances, however, the reciprocity principles of [California] Civil Code 1717 will be applied in actions involving signatory and nonsignatory parties." *Nicholson*, 700 F. App'x at 617–18 (quoting *Real Prop. Servs. Corp.*, 25 Cal. App. 4th at 539). "The California Court of Appeal has observed '[t]here are two factual scenarios where courts have awarded attorney fees in cases involving a nonsignatory to a contract that contains an attorney fee provision': (1) where the nonsignatory party 'stands in the shoes of a party to the contract,' and (2) where 'the nonsignatory litigant is a third party beneficiary of the contract containing the attorney fee provision.'" *Nicholson*, 700 F. App'x at 617–18 (quoting *Richards v. Silva*, No. B267486, 2016 WL 6123917, at \*3–4 (Cal. Ct. App. Oct. 20, 2016)) (citations and internal quotation marks omitted).

"In cases involving nonsignatories to a contract with an attorney fee provision, the following rule may be distilled from the applicable cases: A party is entitled to recover its attorney fees pursuant to a contractual provision only when the party would have been liable for the fees of the opposing party if the opposing party had prevailed." *Dell Merk, Inc. v. Franzia*, 132 Cal.App.4th 443, 451 (Ct. App. 2005).

In *Reynolds Metals Co. v. Alperson*, the defendants, shareholders and directors of Titanium Metallurgical, Inc. ("TMI"), owned and operated a subsidiary, Turner Metals Supply, Inc. ("Turner"). 25 Cal.3d 124, 127 (1979). The plaintiff supplied goods and products to Turner. *Id.* Turner, with TMI as indorser, executed and delivered two promissory notes to the plaintiff. *Id.* The notes provided for, among other things, recovery of attorneys' fees. *Id.* Subsequently, TMI and Turner became insolvent and bankruptcy proceedings commenced. *Id.* The plaintiff brought suit to hold the defendants personally liable for the debts owed to the plaintiff by TMI and Turner, claiming that the defendants were "alter egos" of TMI and Turner. *Id.* The trial court rejected the plaintiff's argument and awarded the defendants attorneys' fees based on the promissory notes. *Id.* The plaintiff appealed. *Id.*, at 126. The Supreme Court of California held that the mandate of reciprocity set forth in Cal. Civ. Code § 1717(a)

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

ensures that, where a plaintiff sues a nonsignatory defendant to hold the defendant liable on the contract, and the defendant prevails, the defendant may use an attorneys' fees provision from the signatory parties' agreement, and mutuality provided by Cal. Civ. Code § 1717(a), to recover the defendant's attorneys' fees. Based on *Reynolds*, in accordance with Cal. Civ. Code § 1717(a), nonsignatory defendants have been allowed to recover attorneys' fees, despite not being a party to the applicable contract. *See, e.g. Burkhalter Kessler Clement & George LLP v. Hamilton*, 19 Cal.App.5th 38 (Ct. App. 2018).

Here, this line of cases is not applicable; Plaintiffs were not signatories to the Agreement. The Agreement was entered into between Mika and Broadway, and signed on both parties' behalf by Mr. Kamen. Defendant cites no authority that allows an award of attorneys' fees, pursuant to Cal. Civ. Code § 1717, without *either* party being a signatory to the contract. Here, if Plaintiffs were the prevailing party, Plaintiffs would not have been entitled to attorneys' fees under the Agreement. As such, the Agreement cannot be a basis for an award of attorneys' fees under Cal. Civ. Code § 1717.

**2. *This Action was Not an "Action on the Contract"***

In the Motion, Defendant argues that although Plaintiffs and Defendant were not signatories to the Agreement, Cal. Civ. Code § 1717 provides that attorneys' fees are still recoverable if the action is based on the contract. Defendant contends that this action was an "action on the contract" because Plaintiffs were suing on the Agreement, *i.e.* claiming breach of fiduciary duty by and through Defendant's position with Mika as its COO.

Although past interpretations of the phrase "action on a contract" have been murky, two recent decisions by the Ninth Circuit Court of Appeals shed some light on which disputes fall within the purview of Cal. Civ. Code § 1717(a). In *Penrod*, prepetition, the debtor and a lender entered into an installment sale contract when the debtor purchased a vehicle. *Penrod*, 802 F.3d at 1086. The contract granted the lender a security interest in the vehicle. *Id.* The debtor then filed a chapter 13 petition and, in her proposed chapter 13 plan, bifurcated the lender's claim into a secured claim in the amount of \$16,000 and an unsecured claim in the amount of \$10,000. *Id.* The lender objected to the proposed chapter 13 plan, arguing that its entire claim should be treated as secured in accordance with the "hanging paragraph" below 11 U.S.C. §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

1325(a)(9), which prohibits bifurcation of claims that are secured by a "purchase money security interest" in a vehicle. *Id.* Eventually, the bankruptcy court decided that the lender was limited to a \$19,000 secured claim and a \$7,000 unsecured claim. *Id.*, at 1087. After an appeal by the lender, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed the bankruptcy court's ruling. *Id.*

The debtor then filed a motion to recover attorneys' fees she incurred opposing the lender's objection to confirmation. *Id.* The debtor relied on a provision in the installment sale contract which read, "You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts." *Id.* Pursuant to this language, the debtor argued she was entitled to attorneys' fees under Cal. Civ. Code § 1717(a). *Id.*

The bankruptcy court held that the action was not an action "on a contract" because the dispute turned on a question of federal bankruptcy law. *Id.* The district court affirmed the bankruptcy court. *Id.*

The Ninth Circuit Court of Appeals disagreed, explaining that:

[The lender] sought to enforce the provisions of its contract with [the debtor] when it objected to confirmation of her proposed Chapter 13 plan. The plan treated [the lender's] claim as only partially secured, but [the lender] insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the contract—in particular, the provision in which [the debtor] granted a security interest in her Taurus to secure "payment of all you owe on this contract." (Had the contract not granted [the lender] a security interest in the car, [the lender] could not have asserted a secured claim for *any* amount. *See* 11 U.S.C. § 506(a).) The security interest conveyed by the contract covered not just the funds [the debtor] borrowed to pay for the Taurus, but also the funds she borrowed to refinance the negative equity in the Explorer. The sole issue in the hanging-paragraph litigation was whether this provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude the negative-equity portion of the loan. *See In re Penrod*, 611 F.3d at 1159–61 & n. 2. By prevailing in that litigation, [the debtor] obtained a ruling that

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

precluded [the lender] from fully enforcing the terms of the contract.

*Id.*, at 1088. On this analysis, the Court of Appeals held the objection to the debtor's confirmation of her chapter 13 plan qualified as an "action on a contract" for purposes of Cal. Civ. Code § 1717(a). *Id.*

The Court of Appeals decided that the bankruptcy court and district court's interpretation of Cal. Civ. Code § 1717(a) was too narrow. *Id.* Those courts had concluded that Cal. Civ. Code § 1717(a) "applies only if the party defeats enforcement under non-bankruptcy law." *Id.* The Court of Appeals held that California law did not prescribe any such limitation to Cal. Civ. Code § 1717(a). *Id.*, at 1089.

After *Penrod*, the Ninth Circuit Court of Appeals issued a decision further clarifying the boundaries of Cal. Civ. Code § 1717(a). *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016). In *Bos*, the debtor was an employer obligated to make payments to certain employee pension funds administered by the Board of Trustees in accordance with trust agreements. *Id.*, at 488. After the debtor failed to make the requirement payments, the debtor signed a promissory note agreeing to make monthly contributions to the funds. *Id.* The debtor was unable to make these payments. *Id.* As such, after the Board of Trustees sued the debtor, an arbitrator ruled the debtor had violated the agreements. A California state court confirmed the arbitration award in a judgment. *Id.*

Around this time, the debtor filed a chapter 7 petition. *Id.* Subsequently, the Board of Trustees filed an adversary proceeding requesting nondischargeability of the judgment pursuant to 11 U.S.C. § 523(a)(4). *Id.* The bankruptcy court held that the judgment was nondischargeable under 11 U.S.C. § 523(a)(4) because the debtor was a fiduciary under the Employee Retirement Income Security Act ("ERISA"). *Id.*, at 489. The district court affirmed. *Id.* On appeal, the Court of Appeals reversed, holding that the debtor was not a fiduciary under ERISA and that 11 U.S.C. § 523(a)(4) did not apply to the debtor. *Id.* The debtor then moved to recover attorneys' fees pursuant to Cal. Civ. Code § 1717 and, alternatively, under ERISA. *Id.*

The Court of Appeals first referenced several prior decisions by the BAP and California courts:

The California Supreme Court has explained that "section 1717 applies only to actions that contain at least one contract claim," and that "[i]f

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

an action asserts both contract and tort or other noncontract claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." *Santisas*, 17 Cal.4th at 615, 71 Cal.Rptr.2d 830, 951 P.2d 399. Consistent with *Santisas*, we have previously held that a nondischargeability action is "on a contract" within section 1717 if "the bankruptcy court needed to determine the enforceability of the ... agreement to determine dischargeability." *In re Baroff*, 105 F.3d 439, 442 (9th Cir.1997).

The Bankruptcy Appellate Panel of the Ninth Circuit has held that *Santisas* and relevant Ninth Circuit cases establish not just a rule of inclusion, but also a rule of exclusion: that "if the bankruptcy court did *not* need to determine whether the contract was enforceable, then the dischargeability claim is *not* an action on the contract within the meaning of [California Civil Code] § 1717." *In re Davison*, 289 B.R. 716, 723 (9th Cir. BAP 2003) (emphasis added).

*Id.* The Court of Appeals then adopted the BAP's interpretation of Cal. Civ. Code § 1717. *Id.*, at 490. The *Bos* court then cited three prior decisions by the Court of Appeals that supported the BAP's interpretation above. *Id.*

First, the Court of Appeals cited *In re Johnson*, 756 F.2d 738 (9th Cir. 1985), for the proposition that an action is not an action "on a contract" if "the action neither litigated the validity of the contract nor required the bankruptcy court to consider 'the state law governing contractual relationships.'" *Bos*, 818 F.3d at 490 (citing *Johnson*, 756 F.2d at 740). "More broadly, [the Court of Appeals] instructed that when federal and not state law governs the substantive issues involved in the adversary proceeding, [the court] may not award attorney's fees pursuant to a state statute." *Id.* (citing *Johnson*, 756 F.2d at 741).

Next, the Court of Appeals cited *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980), in which the Court of Appeals held that a nondischargeability action in bankruptcy was not "on a contract" under an Oregon fee-shifting statute identical to Cal. Civ. Code § 1717. "The reason, we later explained, was that 'the bankruptcy court did not adjudicate the validity of the note in determining whether the debt was dischargeable,' and so the note was merely 'collateral to the non-dischargeability proceeding.'" *Bos*, 818 F.3d at 490 (citing *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (citing



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca  
*Fulwiler*, 524 F.2d at 909-10)).

Chapter 7

Finally, the Court of Appeals referenced *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996), where the court relied on *Baroff* and held that "a creditor's 'dischargeability claim [was] not an action on the contract,' within the meaning of the contract itself, because 'the bankruptcy court did not need to determine the enforceability of the ... agreement to determine dischargeability.'" *Bos*, 818 F.3d at 490 (quoting *Hashemi*, 104 F.3d at 1126).

Based on these authorities, the *Bos* court explained:

In light of our precedents, we are persuaded that the action underlying Bos's fee request—the nondischargeability proceeding that began in bankruptcy court—was not an action "on a contract" within the meaning of section 1717. As the parties agree, "[t]here was no 'breach of contract' claim in the Trust Funds' adversary complaint." The nondischargeability proceeding arose entirely under the federal Bankruptcy Code, and in no way required the bankruptcy court to determine whether or to what extent the Trust Agreements or the Note were enforceable against Bos, or whether Bos had violated their terms. Those questions had been answered in arbitration, and confirmed by a State Court; indeed, in the nondischargeability action Bos conceded that such contracts were valid and that he had breached them. The litigation from that point forward asked only whether federal bankruptcy law forbade Bos from discharging the debts everyone agreed he owed to the Funds. Such litigation is collateral to a contract rather than "on a contract," and as a consequence Bos may not use section 1717 to recover the fees he incurred in pursuing it.

*Id.* The *Bos* court distinguished *Penrod* on the basis that, in *Penrod*, the central question presented to the court was whether the court should enforce a provision in the parties' agreement or whether the debtor could avoid enforcement in accordance with the Bankruptcy Code. *Id.*, at 490-91. In *Bos*, the nondischargeability issue did not present any issues regarding the validity or enforceability of the subject agreement. *Id.*, at 491.

After *Bos*, a bankruptcy court within the Ninth Circuit addressed the issue of whether a nondischargeability action under 11 U.S.C. § 523(a)(2)(A) may be considered an

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT...

**Ernest Charles Barreca**

**Chapter 7**

action "on a contract" for purposes of Cal. Civ. Code § 1717. *In re Zarate*, 567 B.R. 176 (Bankr. N.D. Cal. 2017). In *Zarate*, creditors initiated an adversary proceeding against the debtors alleging that the debtors "'misrepresented facts, concealed and failed to disclose' material facts in order to induce plaintiffs to enter into the" subject agreement. *Id.*, at 181. The creditors requested damages in the amount of \$1.34 million plus prejudgment interest, contractual attorneys' fees and costs. *Id.* Subsequently, the court entered a stipulated judgment through which the debtors agreed to a nondischargeable judgment in the amount of \$831,018.31. *Id.* The creditors then filed a motion for an award of attorneys' fees based on the parties' contract, which included a provision that stated: "In event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith." *Id.*, at 181-83.

The *Zarate* court first noted that "under established California law, a tort claim does not 'enforce' a contract." *Id.*, at 184 (citing *Stout v. Turney*, 22 Cal.3d 718, 730 (1978); and *Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998)). Next, the court found that "the dischargeability of a debt under § 523(a)(2)(A) resolves a tort claim." *Id.* (citing *In re Candland*, 90 F.3d 1466, 1470 (9th Cir. 1996)). The court did not find persuasive the plaintiffs' arguments that the nondischargeability action could be interpreted as one "on the contract." *Id.* The court held that, unlike *Penrod*, the court did not have to assess the enforceability of the subject agreement in *Zarate*:

Here, whether the APA or the 2009 Agreement were enforceable was never a question and the interpretation of these agreements was never an issue. Based on the above, this was not an action on a contract. The APA and the 2009 Agreement provided the context out of which this dispute arose, but this was not an action on a contract. Civil Code § 1717 does not provide a basis to award attorney's fees.

*Id.*, at 185. See also *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980) (holding that the action was not "on the contract" where the bankruptcy court "did not adjudicate the validity of the note in determining whether the debt was dischargeable" and instead determined "that the debtors obtained the loan evidenced by the note through fraud"); cf. *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (finding an action was "on a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

contract" where "the bankruptcy court needed to determine the enforceability of the settlement agreement to determine dischargeability"); and *In re Arciniega*, 2016 WL 455428 (B.A.P. 9th Cir. Feb. 3, 2016) (where the debtor used the subject agreement to support her defense and the bankruptcy court had to interpret a disputed phrase in the agreement in connection with an action under § 523(a)(2)(A) and (a)(6), the action was "on a contract").

Here, even if Plaintiffs and Defendant were parties to the Agreement, the action was not an "action on the contract." "California courts have consistently held that breach of fiduciary duty and fraud claims, although arising out of and related to a contractual relationship, are actions sounding in tort and, therefore, are not actions "on a contract" within the meaning of § 1717." *In re Quinones*, No. 12-46834, 2015 WL 9412851, at \*16 (Bankr. N.D. Cal. Dec. 18, 2015); see also *In re Charalambous*, No. ADV 11-02796-RK, 2013 WL 3369299, at \*6 (B.A.P. 9th Cir. July 3, 2013); *In re Wank*, No. 1:12-AP-01156-MT, 2015 WL 2330294, at \*3-4 (Bankr. C.D. Cal. May 14, 2015); *Smith v. Home Loan Funding, Inc.*, 192 Cal.App.4th 1331, 1337 (2011); *Loube v. Loube*, 64 Cal.App.4th 421, 430 (1998).

Further, to adjudicate Plaintiffs' claims, the Court did not need to assess the validity or enforceability of any provision in the Agreement. Neither Plaintiffs nor Defendant disputed any provision in the Agreement during the course of this adversary proceeding. As such, this case is more similar to *Bos*, *Zarate* and *Fulwiler*, and is easily distinguishable from the contract enforcement issues presented to the *Arciniega* and *Baroff* courts. Given that this Court did not adjudicate any enforcement or validity issues related to the Agreement, and because Plaintiffs requested tort damages, this action is not an action "on the contract" for purposes of Cal. Civ. Code § 1717. Thus, Defendant is not entitled to an award of attorneys' fees pursuant to Cal. Civ. Code § 1717.

***B. CCP §§ 1021 and 1032***

Defendant also is not entitled to attorneys' fees pursuant to CCP § 1021. Pursuant to CCP § 1021—

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Ernest Charles Barreca**

**Chapter 7**

actions or proceedings are entitled to their costs, as hereinafter provided.

Pursuant to CCP § 1032(b)—

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Under CCP § 1033.5(a), the following items are allowable as costs pursuant to § 1032:

(10) Attorney's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

CCP "§ 1032(b) entitles a 'prevailing party' to 'recover costs' as a matter of right 'in any action or proceeding.' Costs may include attorney's fees when authorized by contract, even when the action is not 'on a contract.'" *In re Mac-Go Corp.*, 541 B.R. 706, 715 (Bankr. N.D. Cal. 2015) (citing CCP § 1033.5(a)(10)).

"California courts have uniformly ruled, CCP § 1021 and Cal. Code Civ. P. § 1032 are the only bases for awards of attorney's fees in tort disputes *when provided by agreement of the parties.*" *In re Charalambous*, 2013 WL 3369299 at \*6 (citing *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App. 4th 1338, 1342 (1992)) (emphasis added). The relevant provision in the Agreement states: "Should either *party* employ attorneys to *enforce any of the provisions hereof*, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith." Agreement, ¶ 9 (emphasis added). The attorneys' fees provision in the Agreement specifically limits enforcement of the provision to the parties to the Agreement. The Agreement was entered into between two non-parties to this adversary proceeding. As discussed above, Plaintiffs and Defendant are not parties to the Agreement. As such, there is *no* agreement between Plaintiffs and Defendant that would create a basis for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

an award of attorneys' fees pursuant to CCP § 1021.

Further, even if Plaintiffs and Defendant were parties to the Agreement, the language of the Agreement is not broad enough to cover tort claims. The attorneys' fees provision in the Agreement does not have the same breadth as those in other California cases where attorneys' fees were awarded for noncontract claims under CCP § 1021. For example, the Supreme Court of California found that an agreement covered tort claims when it provided for "litigation arising out of the execution." *Santisas*, 17 Cal. 4th at 608. Similarly, the California Third District Appellate Court found that an agreement covered tort claims when it provided for "any dispute under this Agreement." *Thompson v. Miller*, 112 Cal. App. 4th 327, 337 (2003). The California Second District Appellate Court found that an agreement covered tort claims when it provided for claims "relating to the contract." *Moallem*, 25 Cal.App.4th at 1830–31. Further, the Ninth Circuit Court of Appeals found that an agreement covered tort claims when it provided for "any suit" or other proceeding with respect to the "subject matter or enforcement" of the agreement. *3250 Wilshire Blvd. Bldg. v. W.R. Grace & Co.*, 990 F.2d 487, 489 (9th Cir. 1993). None of these terms are present in the Agreement.

The attorneys' fees provision in the Agreement only covers fees "to enforce any of the provisions hereof." This language is similar to the language of the agreement at issue in *Exxess Electronixx v. Heger Realty Corp.*, 64 Cal. App. 4th 698 (1998). In *Exxess*, the plaintiff sued the defendant for declaratory relief, constructive fraud, breach of fiduciary duty and equitable relief. *Id.*, at 702. The agreement in *Exxess* provided in relevant part: "If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) or Broker in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees...." *Id.*, at 702–03. The court found that the plaintiff's claims for constructive fraud and breach of fiduciary duty were not brought to "enforce the terms" of the lease. *Id.*, at 709–10. The court stated that "tort claims do not 'enforce' a contract." *Id.*

Other California courts have applied the same reasoning as the court in *Exxess*. See, e.g., *McKenzie v. Kaiser-Aetna*, 55 Cal.App.3d 84, 89 (1976) ("... an action for negligent misrepresentation is not an action to enforce the provisions of a contract"); *DeMirjian v. Ideal Heating Corp.*, 91 Cal.App.2d 905, 909-910 (1949) (lease authorizing award of attorneys' fees in an action "to enforce Lessor's rights hereunder"

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

---

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

" does not include tort claims); *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 1342-1343 (1992) (attorneys' fees not permitted on tort claims under contractual provision authorizing fees in an action to interpret or enforce the contract).

As in *Exxess*, the language in the Agreement encompasses only contract claims. Plaintiffs' claims in this adversary proceeding were tort claims. As such, an award of attorneys' fees cannot be sustained on the theory that tort claims were brought to "enforce the provisions" of the Agreement. *See Exxess*, 64 Cal. App. 4th at 709–10. Thus, Defendant is not entitled to an award of attorneys' fees pursuant to CCP § 1021.

***C. Equitable Estoppel***

In the Motion, Defendant argues that Cal. Civ. Code § 1717 has been interpreted by courts to award attorneys' fees in the absence of a contract between the parties under the equitable doctrine of estoppel. Defendant cites to *International Billing Services, Inc. v. Emigh*, 84 Cal. App. 4th 1175 (2000), in support of this proposition.

In *International Billing*, the plaintiff sued six defendants based on a claimed breach of trade secrecy. 84 Cal. App. 4th at 1178–79. Three of the defendants were formerly employed by the plaintiff and signed confidentiality agreements in connection with their employment. *Id.* The complaint filed by the plaintiff included in its prayer a request for attorneys' fees incurred in connection with the action, and the plaintiff attached copies of the confidentiality agreement signed by the three defendants to the complaint. *Id.*, at 1180. The plaintiff consistently maintained in the trial court that attorneys' fees were authorized by a provision in the confidentiality agreement, including concluding its trial brief by requesting an award of fees based on the language in the confidentiality agreement. *Id.*, at 1184–86. The trial court found for the defendants and in postjudgment proceedings, awarded the three defendants attorneys' fees. *Id.* The plaintiff appealed the award of attorneys' fees. *Id.*, at 1178–79.

On appeal, the plaintiff argued, among other things, that the confidentiality agreement did not provide for a fees award. *Id.*, at 1181. The plaintiff contended that the provision in the confidentiality agreement was not an attorneys' fees clause (as plaintiff argued in the trial court), but rather it was an indemnity clause. *Id.*, at 1182–83. The appellate court held, in part, that the plaintiff was estopped from denying that the confidentiality agreement contained an attorneys' fees clause because the plaintiff's prayer for relief sought attorneys' fees, the plaintiff attached the confidentiality agreement to the complaint and the plaintiff consistently maintained

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

---

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

that the provision in the agreement was an attorneys' fees clause. *Id.*, at 1186. The appellate court limited its holding to situations where a party brings a breach of contract action and the contract contains some provision which the party asserts operates as a fees provision. *Id.*, at 1187.

*International Billing* is inapposite. Defendant is correct that Plaintiffs included in their prayer for relief a request for attorneys' fees. However, Plaintiffs never claimed during this adversary proceeding that the Agreement was the basis for the request for attorneys' fees. Plaintiffs did not attach the Agreement to the FAC. Nor did Plaintiffs bring a breach of contract action based on the Agreement.

In the Motion, Defendant argues that the court in *International Billing* recognized a defendant's right to recover fees based solely on plaintiff seeking them in the complaint. Defendant contends that the FAC explicitly sought attorneys' fees, and like the court in *International Billing*, this Court should award Defendant attorneys' fees on equitable grounds. As discussed above, the court in *International Billing* did not award the three defendants attorneys' fees based *solely* on the plaintiff seeking them in the complaint.

Further, the same appellate court that decided *International Billing* subsequently decided *M. Perez Co. v. Base Camp Condominiums Assn. No. One*, 111 Cal. App. 4th 456 (2003). In *M. Perez Co.*, the court stated that *International Billing* sweeps too broadly, and it declined to follow the holding. 111 Cal. App. 4th at 465. The court went on to state that the problem with *International Billing* is that it assumes the underlying litigation is over the validity of the contract in general or the attorney fee provision in particular. *Id.*, at 467–68. The court explained that where the underlying litigation is not over the validity of the contract or the attorney fee provision, the rationale in *International Billing* disappears. *Id.* The court clarified that "[i]n truth the party must still prove that the contract allows attorney fees. The mere allegation is not enough." *Id.*, at 468–69. The court concluded in relevant part,

there is no sound policy or legal basis for the broad rule adopted by this court in *International Billing Services*. That rule would instead violate the very policy considerations it purports to serve. We agree with the many state court decisions refusing to apply estoppel against a losing party who sought attorney fees under circumstances where that party would not have been entitled to such fees had it prevailed.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 28, 2018

Hearing Room 301

2:30 PM

CONT... Ernest Charles Barreca

Chapter 7

*Id.*, at 470. Likewise, other courts have rejected an estoppel theory because "mere allegation of a contractual right to attorney fees is not sufficient to create an estoppel where [a party] would not *actually* have been entitled to attorney fees under the contract if [it] had prevailed." *Myers Bldg. Indus., Ltd. v. Interface Tech., Inc.*, 13 Cal. App. 4th 949, 963 n.12 (1993), *as modified on denial of reh'g* (Mar. 26, 1993) (emphasis in original); *see also Alhambra Redevelopment Agency v. Transamerica Financial Services*, 212 Cal.App.3d 1370, 1381 (1989); *Leach v. Home Savings & Loan Assn.*, 185 Cal.App.3d 1295, 1304-1307 (1986).

Accordingly, even though Plaintiffs included a prayer for attorneys' fees in the FAC, that alone is insufficient to award Defendant attorneys' fees based on estoppel. As discussed above, if Plaintiffs would have prevailed, Plaintiffs would not be entitled to an award of attorneys' fees. As such, there is no basis to award Defendant attorneys' fees based on estoppel.

**D. Reasonableness of Defendant's Attorneys' Fees**

Because Defendant is not entitled to an award of attorneys' fees pursuant to Cal. Civ. Code § 1717 or CCP § 1021, the Court will not discuss the reasonableness of Defendant's attorney's fees.

**III. CONCLUSION**

For the foregoing reasons, the Court will deny the Motion.

Plaintiffs must submit the order within seven (7) days.

**FOOTNOTES**

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. The facts in the background section are from the trial ruling [doc. 291], unless otherwise stated.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 28, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Ernest Charles Barreca**

**Chapter 7**

**Debtor(s):**

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Jeff Katofsky

**Defendant(s):**

Ernest Charles Barreca

Represented By  
Jeff Katofsky

**Plaintiff(s):**

Gerson Fox

Represented By  
Benjamin Nachimson

Gertrude Fox

Represented By  
David B Golubchik  
Benjamin Nachimson

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12214 Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

**#1.00** Chapter 7 trustee's first interim application for compensation and reimbursement of expenses

fr. 11/15/18

Docket 82

**Tentative Ruling:**

David K. Gottlieb, chapter 7 trustee – approve fees of \$2,335.23 and reimbursement of expenses of \$32.77. Such fees have been reduced from the requested fees of \$2,933.52, based on the disallowed fees in matter #2 and the resulting reduced interim amounts disbursed to professionals. The trustee may collect 100% of the approved fees and 100% of the approved expenses at this time.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:16-12214 Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

**#2.00** First interim application for allowance of fees and costs  
filed by Marshack Hayes LLP as general counsel

fr. 11/15/18

Docket 84

**Tentative Ruling:**

Marshack Hays LLP (“Marshack”), general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$19,225.50 and reimbursement of expenses of \$589.93, pursuant to 11 U.S.C. § 331, on an interim basis. Marshack may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court has not awarded \$2,011.50 in fees for the reasons stated below.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

10:30 AM

CONT... **Mahshid Loghmani and Mohsen Loghmani**

Chapter 7

not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Claims Administration	1/18/18	RAM	\$595.00	0.20	\$119.00	Meeting with Laila Masud re: evaluating merit of claims

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

Administration	Claims	3/9/18	LM	\$300.00	0.30	\$90.00	Review proof of claim #3 filed by Tessie Cleveland Community Services (.10); Review proof of claim #4 filed by Tessie Cleveland Community Services (.10); Review proof of claim #5 filed by Tessie Cleveland Community Services (.10)
Administration	Claims	5/29/18	LM	\$330.00	0.10	\$33.00	Review claims register for potential objections to proceed with case closure
Administration	Claims	5/31/18	LM	\$330.00	0.10	\$33.00	Phone conference with Richard A. Marshack re: claims review and potential objections
Administration	Claims	5/31/18	RAM	\$630.00	0.20	\$126.00	Review and analyze claims docket and telephone conference with Laila Masud
Administration	Claims	5/31/18	RAM	\$630.00	0.10	\$63.00	Telephone conference with Laila Masud re: claims review and potential objections
Administration	Claims	8/8/18	LM	\$330.00	0.10	\$33.00	Review amended proof of claim filed by taxing authority FTB
Administration	Claims	8/8/18	LM	\$330.00	0.10	\$33.00	Review amended proof of claim filed by FTB
Fee/Employment Applications	Fee/Employment Applications	12/14/17	LM	\$300.00	0.80	\$240.00	Review, revise and supplement application to employ Marshack Hays as general counsel (.10); Draft written correspondence to D. Edwards Hays re: same (.10)
Fee/Employment Applications	Fee/Employment Applications	12/18/17	LM	\$300.00	0.70	\$210.00	Conference with Richard A. Marshack re: employment application of firm to include general bankruptcy counsel language (.30); Revise and finalize employment application (.10); Draft written correspondence to Trustee re: signature and review of employment application before filing (.10); Review correspondence from Trustee re: execution of signature page on application for employment of Marshack Hays as general bankruptcy counsel (.10); Draft written correspondence to Layla Buchanan re: notice of motion draft for filing on 12/19 (.10)
Fee/Employment Applications	Fee/Employment Applications	12/18/17	RAM	\$595.00	0.20	\$119.00	Review and revise application to employ
Fee/Employment Applications	Fee/Employment Applications	12/18/17	RAM	\$595.00	0.30	\$178.50	Meeting with Laila Masud re: changes to application to employ

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

10:30 AM

CONT...

**Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

Fee/Employment Applications	12/19/17	LM	\$300.00	0.40	\$120.00	Review and revise notice of application to employ Marshack Hays as general bankruptcy counsel (.10); Draft written correspondence to Layla Buchanan re: notice ready for filing (.10); Review written correspondence from Trustee re: signature page for filing employment application (.10)
Fee/Employment Applications	12/19/17	LB	\$190.00	0.50	\$95.00	Conference with Laila Masud (.10); Draft notice of employment application (.40)
Fee/Employment Applications	12/19/17	LB	\$190.00	0.30	\$57.00	Conference with Laila Masud (.10); Review and revise employment application (.10); Review and revise notice (.10)
Fee/Employment Applications	1/4/18	LB	\$190.00	0.80	\$152.00	Conference with Laila Masud (.10); Draft declaration re no request for hearing on application to employ firm as general counsel (.20); Locate and bate label exhibits to same (.20); Draft proposed order granting application (.10)
Fee/Employment Applications	1/4/18	LM	\$300.00	0.20	\$60.00	Review and revise order and declaration of non-opposition to application to employ Marshack Hays as general bankruptcy counsel
Fee/Employment Applications	1/17/18	LM	\$300.00	0.10	\$30.00	Conference with Layla Buchanan re: employment of Marshack Hays as general bankruptcy counsel and whether order was lodged
Fee/Employment Applications	1/30/18	LM	\$300.00	0.10	\$30.00	Review written correspondence from Layla Buchanan re: declaration of non-opposition and order on application to employ Marshack Hays as general bankruptcy counsel

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**

for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Litigation	3/1/18	CM	\$190.00	0.20	\$38.00	Prepare draft notice of increased hourly rates charged by Marshack Hays LLP
Litigation	3/1/18	CM	\$190.00	0.20	\$38.00	Revise and finalize notice of increased hourly rates charged by Marshack Hays LLP
Asset Disposition	2/13/18	LB	\$190.00	0.60	\$114.00	Locate and bate label exhibits to the declaration of Michael Thompson

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Marshack is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Marshack will be so notified.

**Party Information**

**Debtor(s):**

Mahshid Loghmani

Represented By  
Allan D Sarver

**Joint Debtor(s):**

Mohsen Loghmani

Represented By  
Allan D Sarver

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Richard A Marshack  
Laila Masud  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Mahshid Loghmani and Mohsen Loghmani**

**Chapter 7**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#3.00** First and final fee application of Chapter 11 Trustee for approval of compensation and reimbursement of expense period: 2/6/2018 to 10/15/2018

fr. 11/15/18

Docket 338

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 11 trustee – approve fees of \$86,681.98 and reimbursement of expenses of \$4,526.54. Such fees have been reduced from the requested fees of \$88,881.91, based on the disallowed fees in matters #4 and 6 and the resulting reduced amounts disbursed to professionals.

The trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the trustee will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#4.00** Application for payment of final fees and/or expenses under 11 U.S.C. § 330 for Levene, Neale, Bender, Yoo & Brill L.L.P., Trustee's Attorney, Period: 2/2/2018 to 10/17/2018

fr. 11/15/18

Docket 346

**Tentative Ruling:**

Levene, Neale, Bender, Yoo & Brill L.L.P ("Applicant"), general counsel to Nancy Hoffmeier Zamora, chapter 11 trustee – approve fees of \$206,332.61 and reimbursement of expenses of \$12,237.78, pursuant to 11 U.S.C. § 330. The Court has not awarded \$53,427.89 in fees for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this case, "the court shall not allow compensation for— (i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In light of the above, the Court reduced the following fees, in the amounts indicated, as excessive:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

Category	Date	Timekeeper	Rate	Time	Fee	Reduction	Description
Asset Analysis and Recovery	2/8/18	EMW	\$595.00	2.9	\$1,725.00	\$862.50	Analysis of UST letter, tlecon trustee; ongoing review of files and documents; telecon JSK re cash collateral order and RP manager
Asset Analysis and Recovery	2/9/18	EMW	\$595.00	5.7	\$3,391.50	\$1,695.75	Analysis of documents received from trustee; review DIP pleadings; complete revision of agent agt
Asset Analysis and Recovery	2/9/18	EMW	\$595.00	3.8	\$2,261.00	\$1,695.75	Analysis of debtor's responses to trustee's request for documents; review RP profiles
Asset Analysis and Recovery	2/13/18	EMW	\$595.00	2.3	\$1,368.50	\$1,026.38	Analysis of title reports and documents from debtor; review emails from trustee
Asset Analysis and Recovery	2/21/18	EMW	\$595.00	4.7	\$2,796.50	\$2,097.38	Analysis of files and e-mails; conference call with trustee
Asset Analysis and Recovery	2/26/18	EMW	\$595.00	3.3	\$1,963.50	\$1,472.63	Analysis of bankruptcy filings; review e-mails from trustee and accountants; analysis of corporate ownership issues; send analysis to trustee
Asset Analysis and Recovery	2/27/18	EMW	\$595.00	3.8	\$2,261.00	\$1,695.75	Analysis of files and documents; review documents from JSK; conference call with hg. Orantes
Asset Analysis and Recovery	3/1/18	EMW	\$595.00	4.3	\$2,558.50	\$1,918.50	Analysis of cash flows; review and respond to numerous emails
Asset Analysis and Recovery	3/14/18	EMW	\$595.00	5.5	\$3,272.50	\$1,636.25	Review and revise pleadings re sale of Hillsborough and Woodley; email exchange with trustee and JSK
Asset Analysis and Recovery	3/14/18	EMW	\$595.00	1.1	\$654.50	\$327.25	Email exchange with trustee and JSK re further revisions to sale motion
Asset Analysis and Recovery	3/14/18	EMW	\$595.00	2.5	\$1,487.50	\$743.75	Review and revise Woodley and Hillsborough sale pleadings; review tax memos; review and respond to emails from trustee, accountants and JSK
Asset Analysis and Recovery	3/16/18	EMW	\$595.00	2.8	\$1,666.00	\$833.00	Telephone conference with re sale hearings; review and respond to numerous emails re RP sales

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

Asset Analysis and Recovery	3/23/18	EMW	\$595.00	4.1	\$2,439.50	\$1,219.75	Analysis of brief – debtor’s omnibus objections; email exchange with trustee and JSK; review related documents; discuss response strategies
Asset Analysis and Recovery	3/28/18	EMW	\$595.00	3.3	\$1,963.50	\$981.75	Review and revise pleadings re sale of Woodley and Hillsborough; review related documents; email exchanges with JSK
Asset Analysis and Recovery	4/20/18	EMW	\$595.00	1.6	\$952.00	\$476.00	Analysis of brief re sale of Gledhill and Cagney; revisit debtor’s opposition; send revision comments to JSK; draft file notes
Asset Analysis and Recovery	5/3/18	EMW	\$595.00	4.4	\$2,618.00	\$654.50	Analysis of documents and files; conference with trustee; review tentative; appear at sale hearing and on motion to dismiss
Asset Analysis and Recovery	6/26/18	EMW	\$595.00	1.3	\$773.50	\$386.75	Review and revise Winnetka sale motion reply
Asset Analysis and Recovery	6/26/18	JSK	\$425.00	3.4	\$1,445.00	\$722.50	Preparation of Winnetka sale reply revisions from EMW and trustee
Asset Analysis and Recovery	6/27/18	JSK	\$425.00	2.2	\$935.00	\$467.50	Preparation of revise Winnetka sale reply
Business Operations	2/7/18	EMW	\$595.00	4.4	\$2,618.00	\$1,309.00	Analysis of 32-page memo from trustee re debtor’s business operations
Fee/ Employment Applications	2/9/18	JSK	\$425.00	2.3	\$977.50	\$488.75	Preparation of motion to employ Jalmar as real property manager
Fee/ Employment Applications	2/9/18	JSK	\$425.00	1.1	\$467.50	\$233.75	Preparation of notice of Jalmar employment motion
Fee/ Employment Applications	2/9/18	JSK	\$425.00	1.7	\$722.50	\$361.25	Preparation of motion to approve Jalmar agreement
Fee/ Employment Applications	2/15/18	JSK	\$425.00	0.9	\$382.50	\$191.25	Preparation of revise employment application for property manager
Fee/ Employment Applications	2/15/18	JSK	\$425.00	0.5	\$212.50	\$106.25	Preparation of revise Jalmar motion to employ and send to trustee
Fee/ Employment Applications	2/19/18	JSK	\$425.00	0.7	\$297.50	\$148.75	Preparation of revise Jalmar employment motion w/ trustee comments
Relief from Stay	4/17/18	EMW	\$595.00	1.1	\$654.50	\$327.25	Analysis of Mercedes RFS motion; review schedules; send email to trustee
Plan and Disclosure Statement	3/16/18	JSK	\$425.00	3.5	\$1,487.50	\$743.75	Preparation of 1106 report

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

Plan and Disclosure Statement	3/19/18	JSK	\$425.00	1.4	\$595.00	\$297.50	Preparation of revise 1106 report and compile exhibits for filing
Plan and Disclosure Statement	5/18/18	EMW	\$595.00	4.3	\$2,558.50	\$1,279.25	Analysis of debtor's DS and related documents
Plan and Disclosure Statement	5/21/18	EMW	\$595.00	2.7	\$1,606.50	\$803.25	Analysis of plan and DS; conference call with trustee, JSK and K. Wright re response
Plan and Disclosure Statement	5/22/18	JSK	\$425.00	1.8	\$765.00	\$382.50	Preparation of letter to debtor's counsel re withdrawal of plan
Plan and Disclosure Statement	6/19/18	EMW	\$595.00	1.6	\$952.00	\$476.00	Review and revise updated version of response to disclosure statement; draft email to trustee
Plan and Disclosure Statement	6/20/18	EMW	\$595.00	1.4	\$833.00	\$416.50	Review and revise final draft of responses to debtor's disclosure stmt
Plan and Disclosure Statement	6/20/18	JSK	\$425.00	1.8	\$765.00	\$382.50	Preparation of revise response to debtor's DS with comments from trustee and EMW
Plan and Disclosure Statement	6/29/18	EMW	\$595.00	2.3	\$1,368.50	\$684.25	Analysis of debtor's reply re disclosure statement; email exchange with trustee and JSK; prepare file notes
Plan and Disclosure Statement	7/16/18	EMW	\$595.00	2.8	\$1,666.00	\$833.00	Review and revise Wright declaration; emails to and from trustee, JSK and K. Wright
Plan and Disclosure Statement	7/18/18	EMW	\$595.00	1.9	\$1,130.50	\$565.25	Analysis of additional documents provided by debtor; send e-mails to mediator; conference call with trustee, K. Wright, JSK re hearing; draft file notes
Plan and Disclosure Statement	8/1/18	EMW	\$595.00	1.2	\$714.00	\$357.00	Email exchange with trustee re Jevic issues related to structured dismissal; analysis of email from mediator and UST; draft file notes
Plan and Disclosure Statement	8/31/18	EMW	\$595.00	2.1	\$1,249.50	\$624.75	Analysis of pleadings filed by debtor
Plan and Disclosure Statement	9/20/18	EMW	\$595.00	1.1	\$654.50	\$327.25	Review and revise order denying budget motion; review email from JSK re budget motion hearing; send email to trustee re bar date
Other Litigation	3/20/18	EMW	\$595.00	1.4	\$833.00	\$416.50	Review and revise Emymac CMP; send emails to IMG and JSK re same

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

**10:30 AM**

**CONT...**

**Mehri Akhlagpour**

**Chapter 11**

Other	Litigation	9/4/18	EMW	\$595.00	1.7	\$1,011.50	\$505.75	Analysis of pleadings for 9/20 hearing
-------	------------	--------	-----	----------	-----	------------	----------	--

The Court also will reduce the following fees in full as being excessive or duplicative:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Asset Analysis and Recovery	5/2/18	EMW	\$595.00	0.9	\$535.50	Preparation for hearing on real property sales; review Court tentatives
Asset Analysis and Recovery	5/2/18	JSK	\$425.00	1.2	\$510.00	Preparation for hearing motion to dismiss and CG sale hearings
Asset Analysis and Recovery	5/3/18	JSK	\$425.00	0.5	\$212.50	Preparation for hearing re motion to dismiss and CG sale motions
Asset Analysis and Recovery	6/25/18	JSK	\$425.00	2.4	\$1,020.00	Preparation of Winnetka sale reply
Asset Analysis and Recovery	6/26/18	JSK	\$425.00	3.7	\$1,572.50	Preparation of Winnetka sale reply declarations
Fee/Employment Applications	2/20/18	JSK	\$425.00	0.2	\$85.00	Preparation of Jalmar motion for filing
Fee/Employment Applications	2/21/18	JSK	\$425.00	0.2	\$85.00	Preparation of revise real property manager motion (Jalmar)
Fee/Employment Applications	10/15/18	JSK	\$425.00	1.9	\$807.50	Revise LNBYB fee application
Plan and Disclosure Statement	4/16/18	JSK	\$425.00	1.5	\$637.50	Preparation of opposition to debtor's motion to dismiss
Plan and Disclosure Statement	4/17/18	JSK	\$425.00	2.0	\$850.00	Preparation of opposition to debtor's dismissal motion
Plan and Disclosure Statement	6/14/18	JSK	\$425.00	4.1	\$1,742.50	Preparation of response to debtor's disclosure statement
Plan and Disclosure Statement	6/14/18	JSK	\$425.00	3.4	\$1,445.00	Preparation of response to debtor's disclosure statement
Plan and Disclosure Statement	6/14/18	JSK	\$425.00	1.6	\$680.00	Preparation of disclosure statement response
Plan and Disclosure Statement	6/20/18	JSK	\$425.00	0.9	\$382.50	Preparation of revise disclosure statement response
Plan and Disclosure Statement	6/21/18	JSK	\$425.00	0.5	\$212.50	Preparation of revise DS response
Plan and Disclosure Statement	10/15/18	JSK	\$425.00	3.0	\$1,275.00	Revise joint dismissal motion

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. See *In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT... Mehri Akhlaghpour**

**Chapter 11**

disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court also disallowed a total of \$8,200 incurred by timekeepers Jason Klassi, John A. Berwick, Lourdes Cruz, Stephanie Reichert and Lisa Masse.

Applicant must submit an order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#5.00** Application for payment of final fees and/or expenses (11 USC §330)  
for Giovanni Orantes, debtor's attorney, period: 10/11/2017 to 2/26/2018

fr. 11/15/18

Docket 343

**Tentative Ruling:**

The Orantes Law Fir, P.C. ("Applicant") general counsel to debtor in possession – approve fees of \$47,797 and reimbursement of expenses of \$2,692.31, pursuant to 11 U.S.C. § 330, on a final basis.

The Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#6.00** First and final application for compensation and reimbursement of expenses of Grobstein Teeple, LLP as accountants for the Chapter 11 Trustee

fr. 11/15/18

Docket 351

**Tentative Ruling:**

Grobstein Teeple, LLP ("Applicant") accountants to the chapter 11 trustee – approve fees of \$84,026 and reimbursement of expenses of \$202.26, pursuant to 11 U.S.C. § 330, on a final basis. The Court has not awarded \$19,903 in fees for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this case, "the court shall not allow compensation for— (i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In light of the above, the Court reduced the following fees by 50% as excessive:

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

Category	Date	Timekeeper	Rate	Time	Fee	Adjusted	Description
Accounting Services	2/12/18	KRM	\$185.00	2.40	\$444.00	\$222.00	Update case analysis with detailed information regarding property values.
Accounting Services	2/13/18	KRW	\$295.00	4.20	\$1,239.00	\$619.50	Review petition, SOFA, schedules and amended schedules in preparation for meeting tomorrow.
Accounting Services	2/15/18	KRM	\$185.00	3.90	\$721.50	\$360.75	Review property mortgage and insurance documents, create detailed list for each.
Accounting Services	2/16/18	KRM	\$185.00	5.50	\$1,017.50	\$508.75	Review open item request list and update schedule.
Accounting Services	2/16/18	KRM	\$185.00	2.30	\$425.50	\$212.75	Review additional items regarding open item list, update list as necessary.
Accounting Services	2/17/18	KRM	\$185.00	4.30	\$795.50	\$397.75	Review additional action and open items. Update open item list as necessary.
Accounting Services	2/19/18	KRW	\$295.00	1.10	\$324.50	\$162.25	Update and prepare consolidated Open Items list for debtor.
Accounting Services	2/19/18	KRW	\$295.00	1.90	\$560.50	\$280.25	Review of trustee's correspondence regarding real property issues.
Accounting Services	2/19/18	KRM	\$185.00	2.10	\$388.50	\$194.25	Review emails regarding open item list and changes from Trustee.
Accounting Services	2/19/18	KRM	\$185.00	3.40	\$629.00	\$314.50	Update open item list with comments from Trustee.
Accounting Services	2/19/18	KRM	\$185.00	4.60	\$851.00	\$425.50	Prepare detailed summary for each property, including documents received, and items to be completed.
Accounting Services	2/20/18	KRW	\$295.00	0.70	\$206.50	\$103.25	Review of memo of debtor office site visit by GT.
Accounting Services	2/20/18	KRM	\$185.00	2.10	\$388.50	\$194.25	Prepare memo for Trustee regarding site visit.
Accounting Services	2/27/18	KRM	\$185.00	1.30	\$240.50	\$120.25	Review Secretary of State documents.
Accounting Services	3/2/18	KRM	\$185.00	8.30	\$1,535.50	\$767.75	Prepare 13 week cash flow schedule for each property.
Accounting Services	3/3/18	KRM	\$185.00	2.30	\$425.50	\$212.75	Review documents relating to properties, update inventory, open item list and action item list.
Accounting Services	3/3/18	KRW	\$295.00	2.80	\$518.00	\$259.00	Prepare 13 week cash flow analysis.
Accounting Services	3/5/18	KRM	\$185.00	6.20	\$1,147.00	\$573.50	Update 13 week cash flow for Debtors rental properties.
Accounting Services	3/6/18	KRM	\$185.00	5.30	\$980.50	\$490.25	Prepare detailed assumptions for Woodley property cash flow.
Accounting Services	3/6/18	KRM	\$185.00	4.10	\$758.50	\$379.25	Prepare detailed assumptions for Gledhill property cash flow.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

10:30 AM

**CONT...**

**Mehri Akhlaghpour**

**Chapter 11**

Accounting Services	3/7/18	KRM	\$185.00	2.40	\$444.00	\$222.00	Prepare detailed assumptions for Cagney property cash flow.
Accounting Services	3/7/18	KRM	\$185.00	2.80	\$518.00	\$259.00	Prepare detailed assumptions for Hillsborough property cash flow.
Accounting Services	3/7/18	KRM	\$185.00	2.70	\$499.50	\$249.75	Prepare detailed assumptions for Zelzah property cash flow.
Accounting Services	3/8/18	KRM	\$185.00	2.40	\$444.00	\$222.00	Prepare detailed assumptions for summary of properties cash flow.
Accounting Services	3/8/18	KRM	\$185.00	4.30	\$795.50	\$397.75	Review assumptions and projections and update accordingly.
Accounting Services	3/9/18	KRM	\$185.00	1.70	\$314.50	\$157.25	Review and update cash flow for Debtor's personal residence.
Accounting Services	3/9/18	KRM	\$185.00	1.80	\$333.00	\$166.50	Review and update cash flow for Zelzah property.
Accounting Services	3/9/18	KRM	\$185.00	1.80	\$333.00	\$166.50	Review and update cash flow for Woodley property.
Accounting Services	3/9/18	KRM	\$185.00	1.80	\$333.00	\$166.50	Review and update cash flow for Gledhill property.
Accounting Services	3/9/18	KRM	\$185.00	2.10	\$388.50	\$194.25	Review and update cash flow for Cagney property.
Accounting Services	3/9/18	KRM	\$185.00	2.30	\$425.50	\$212.75	Review and update cash flow for summary of properties.
Accounting Services	3/12/18	KRM	\$185.00	2.80	\$518.00	\$259.00	Incorporate administration and professional fees into cash flow projections.
Accounting Services	3/13/18	KRM	\$185.00	3.10	\$573.50	\$286.75	Review documents and update open item list.
Accounting Services	3/15/18	HBG	\$475.00	1.40	\$665.00	\$332.50	Preparation of 13 week cash flow projections.
Accounting Services	3/20/18	KRM	\$185.00	2.80	\$518.00	\$259.00	Update property and individual cash flow.
Accounting Services	3/29/18	KRW	\$295.00	4.10	\$1,209.50	\$604.75	Update 13 week cash flow in response to debtor's objection to Hillsborough and Woodley sale motion.
Accounting Services	7/3/18	KRM	\$185.00	2.30	\$425.50	\$212.75	Prepare June 2018 MOR.
Accounting Services	7/18/18	KRW	\$305.00	1.70	\$518.50	\$259.25	Prepare for hearing by reviewing Solorzano's declaration.
Accounting Services	7/19/18	KRW	\$305.00	1.30	\$396.50	\$198.25	Prepare for hearing by reviewing Solorzano's declaration.

The Court also will reduce the following fees in full as being excessive or unnecessary to the administration of the estate:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Accounting Services	2/9/18	KRM	\$185.00	1.30	\$240.50	Prepare summary of complaints filed against debtor.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

10:30 AM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

Accounting Services	2/14/18	HBG	\$475.00	4.80	\$2,280.00	Travel to and from and attend meeting with trustee, counsel and Debtor regarding business and personal financial affairs; debtor and debtor's counsel were uncooperative.
Accounting Services	3/3/18	KRM	\$185.00	2.80	\$518.00	Prepare 13 week cash flow analysis.
Accounting Services	5/7/18	KRM	\$185.00	3.40	\$629.00	Prepare disbursement schedule to calculate 1st Quarter UST Fees.
Accounting Services	5/15/18	KRM	\$185.00	1.30	\$240.50	Finalize April 2018 MOR.
Accounting Services	6/13/18	KRM	\$185.00	0.80	\$148.00	Prepare May 2018 MOR.
Accounting Services	7/3/18	KRM	\$185.00	1.60	\$296.00	Prepare 2nd Quarter UST fee calculation.
Accounting Services	7/13/18	KRM	\$185.00	1.20	\$222.00	Review and finalize June MOR.

Regarding Mr. Grobstein's attendance at the meeting on February 14, 2018, the Court did not award fees for Mr. Grobstein's attendance because one of Applicant's other professionals also attended the same meeting. The Court awarded Applicant \$2,006 in fees for Ms. Wright's attendance at that meeting.

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.").

Accordingly, the Court will disallow the following fees:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Accounting Services	2/28/18	KRM	\$185.00	0.80	\$148.00	Inventory of documents from Secretary of State website and Statement of Information.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

10:30 AM

CONT...

**Mehri Akhlaghpour**

**Chapter 11**

Accounting Services	3/13/18	KRM	\$185.00	2.70	\$499.50	Review and inventory documents provided by Debtor.
Accounting Services	3/15/18	KRM	\$185.00	3.20	\$592.00	Review and inventory of bankruptcy documents.
Accounting Services	3/16/18	KRM	\$185.00	1.80	\$333.00	Review and inventory documents relating to properties.
Accounting Services	4/5/18	KRM	\$185.00	1.10	\$203.50	Review and inventory of documents relating to rental properties.
Fee/Employment Application	2/7/18	DD	\$125.00	0.50	\$62.50	Compiled exhibits and proof of service for employment application and notice to employ.
Fee/Employment Application	2/7/18	DD	\$125.00	0.20	\$25.00	Filed the Employment Application and Notice to Employ.
Fee/Employment Application	2/8/18	CZ	\$125.00	1.40	\$175.00	Creditor Mailing – notice to employ
Fee/Employment Application	2/28/18	DD	\$125.00	0.30	\$37.50	Filed the Declaration of Non-Opposition on PACER and lodged the Order.

In addition, the Court deducted the following fees as both secretarial and excessive:

Category	Date	Timekeeper	Rate	Time	Fee	Description
Accounting Services	2/8/18	KRM	\$185.00	2.30	\$425.50	Review and inventory of documents relating to properties owned by the Debtor.
Accounting Services	2/8/18	KRM	\$185.00	2.20	\$407.00	Review and inventory emails and attachments from trustee.
Accounting Services	2/12/18	KRM	\$185.00	4.30	\$795.50	Review and inventory additional documents provided by Trustee.

Applicant must submit an order within seven (7) days.

**Party Information**

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#7.00** Joint motion by the trustee and debtor to dismiss chapter 11 case  
fr. 11/15/18

Docket 352

**Tentative Ruling:**

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Edward M Wolkowitz  
Jeffrey S Kwong

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#8.00** Motion to require Schuller & Schuller to pay attorneys fees and costs

fr. 10/18/18(stip); 11/1/18

Docket 160

**Tentative Ruling:**

For the reasons discussed below, the Court will grant the motion in part and deny the motion in part.

**I. BACKGROUND**

In December 2006, Deborah Lois Adri ("Debtor") retained Schuller & Schuller ("Schuller") to represent her in a state court case (the "State Court Case") [Declaration of Deborah Adri ("Adri Decl."), doc. 161, ¶3]. Debtor and Schuller entered into a written attorney-client fee agreement (the "Agreement") [Adri Decl., Exh. A]. In relevant part, the Agreement provides:

**9. BILLING STATEMENTS AND PAYMENT.** The prevailing party in any litigation, arbitration or proceeding arising out of, or relating to, this Agreement to and the attorney-client relationship between Client and Schuller, must be awarded all actual attorneys' fees and cost it incurred, as well as the enforcement of any judgment or award rendered thereon.

**19. MEDIATION.** If a dispute arises out of, or relates to, any aspect of this Agreement, breach thereof, or the attorney client relationship between Client and Schuller, and if the dispute cannot be settled through negotiation, Schuller and Client agree to submit their dispute or disagreement to mediation with a retired judge or attorney before resorting to and filing of any claims, lawsuits or the like in court, arbitration or fee dispute program.

On May 6, 2008, Schuller's representation of Debtor in the State Court Case was terminated by a substitution of attorney that was filed with the state court [doc. 123, Exh. 2]. On May 12, 2008, Schuller mailed a letter to Debtor demanding that she pay its alleged outstanding invoice (the "May 12 Letter") [doc. 123, Exh. 3].

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

Schuller alleges that it continued to send monthly billing statements to Debtor each month from May 31, 2008 through January 31, 2018 [doc. 143, Exh. D; Declaration of Henri R. Schuller ("Schuller Decl."), doc. 143, ¶ 9; Declaration of Denise Denney-Garrett ("Denney-Garrett Decl."), doc. 143]. Further, each month Schuller added interest to the original obligation pursuant to the terms of the contract between the parties, which is reflected in the monthly billing statements [doc. 143, Exhs. A & D].

On February 16, 2018, Debtor filed a voluntary chapter 11 petition. In her original schedule E/F, Debtor listed a \$331,651.00 debt owed to Schuller for attorney fees. Debtor indicated that the debt is disputed [doc. 1, p. 34].

On March 29, 2018, the first § 341(a) meeting of creditors took place. Prior to the meeting, Schuller made a demand for documents related to Debtor's interest in real property owned directly by Debtor or by any holding entity. On May 3, 2018, a continued § 341(a) meeting was held. Debtor's counsel did not produce the documents requested by Schuller, but instead produced a tax transcript [Declaration of Shai Oved, ¶ 2].

On May 4, 2018, Schuller's counsel filed an application for Rule 2004 examination of Debtor (the "2004 Application") [doc. 68]. Schuller's stated basis for the 2004 Application was to determine: (1) whether Schuller's claims against Debtor for over \$300,000.00 were nondischargeable for fraud and intentional torts under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6); (2) whether Debtor should be barred from discharge for making a false oath, bad faith, fraud, concealing assets, failure to explain the loss of financial records or providing false and incomplete information on her bankruptcy petition; and (3) the value of Debtor's assets [doc. 68]. On May 9, 2018, Debtor objected to the 2004 Application. In her objection, the Debtor agreed to produce certain documents, but disputed the scope and relevance of other document requests.

On May 11, 2018, Debtor filed a motion for a protective order (the "Protective Order Motion") [doc. 76]. On May 13, 2018, Schuller filed a response to the Protective Order Motion [doc. 84]. On June 14, 2018, the Court held a hearing on the Protective Order Motion. The Court continued the hearing on the Protective Order Motion to July 19, 2018, to allow the parties to file a stipulation pursuant to Local Bankruptcy Rule 7026-1(c)(3), addressing the disputed document production categories.

On May 24, 2018, Schuller filed a *Motion to Extend Time in Which to File a*



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

*Complaint Under § 523 and/or to Deny a Discharge* (the "Motion to Extend Time") [doc. 93]. On June 7, 2018, Debtor filed an opposition to the Motion to Extend Time [doc. 103]. On July 3, 2018, the Court entered an order granting the Motion to Extend Time (the "Order Extending Time") [doc. 120]. The Order Extending Time provided that Schuller's deadline to file such complaint was August 20, 2018.

On July 13, 2018, Schuller filed proof of claim no. 9 (the "Claim") for services performed, fees/costs advanced and finance charges [Claim 9, p. 2]. On July 17, 2018, Debtor filed an objection to the Claim (the "Objection") [doc. 123] on the basis that the statute of limitations bars the Claim. On July 19, 2018, the Court continued the hearing on the Protective Order Motion to August 23, 2018, to coincide with the hearing on the Objection.

On July 26, 2018, Debtor's counsel filed a *First Interim Application of Law Offices of Robert M. Yaspan for Compensation and Reimbursement of Expenses Incurred as Counsel to Debtor and Debtor-in-Possession* (the "Fee Application") [doc. 136]. In the Fee Application, Debtor's counsel requested payment of fees for services provided in connection with the 2004 Application, the Protective Order Motion, the Motion to Extend Time and the Objection.

On August 23, 2018, the Court held a hearing on the Protective Order Motion and the Objection. On September 4, 2018, the Court entered an order denying the 2004 Application because Schuller did not have standing and denying the Protective Order Motion as moot [doc. 155]. Also on September 4, 2018, the Court entered an order sustaining the Objection and disallowing the Claim in its entirety [doc. 156]. The Court found, in part, that the Claim was time barred by the statute of limitations [doc. 148].

On September 18, 2018, Debtor filed a *Motion to Require Schuller & Schuller to Pay Attorneys' Fees and Costs* (the "Motion") [doc. 160]. In the Motion, Debtor asks the Court to enter an order requiring Schuller to pay attorneys' fees and costs that were incurred in connection with the 2004 Application, the Protective Order Motion, the Order Extending Time and the Objection pursuant to Cal. Civ. Code § 1717 and CCP §§ 1021 and 1032. On September 20, 2018, the Court held a hearing on the Fee Application.

On October 18, 2018, Schuller filed an opposition to the Motion (the "Opposition")

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

[doc. 177]. On October 25, 2018, Debtor filed a reply to the Opposition [doc. 182].

**II. DISCUSSION**

In federal courts, there is generally no right to attorneys' fees unless authorized by contract or by statute. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257, 95 S.Ct. 1612, 1621, 44 L.Ed.2d 141 (1975) ("Other recent cases have also reaffirmed the general rule that, absent statute or enforceable contract, litigants pay their own attorneys' fees."). In *Cohen v. de la Cruz*, 523 U.S. 213, 218–20, 118 S.Ct. 1212, 1216–17, 140 L.Ed.2d 341 (1998), the Supreme Court of the United States interpreted the discharge exceptions under 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(9) to encompass all liability arising on account of a debtor's fraudulent conduct, including attorneys' fees and costs to which the creditors were entitled under state law. As such, "the determinative question for awarding attorneys' fees is whether the creditor would be able to recover the fee outside of bankruptcy under state or federal law." *In re Hung Tan Pham*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000). Here, Debtor cites Cal. Civ. Code § 1717 and CCP § 1032 as the operative state statutes.

**A. Cal. Civ. Code § 1717(a)**

Pursuant to Cal. Civ. Code § 1717(a)—

In any action on a contract, where the contract specifically provides that attorneys' fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorneys' fees in addition to other costs.

"Civil Code § 1717 makes an otherwise unilateral contractual obligation to pay attorneys' fees into a reciprocal one in an action on the contract but Civil Code § 1717 is not applicable in a tort action." *In re Bic Pho*, 2016 WL 1620375, at \*3 (Bankr. N.D. Cal. Apr. 20, 2016); *see also Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998) (finding that § 1717 applies only to fees incurred to litigate contract claims); *and In re Deuel*, 482 B.R. 323, 328 (Bankr. S.D. Cal. 2012) (same).

To obtain fees pursuant to Cal. Civ. Code § 1717(a), "[t]hree conditions must be

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

met...." *In re Penrod*, 802 F.3d 1084, 1087 (9th Cir. 2015).

First, the action in which the fees are incurred must be an action "on a contract," a phrase that is liberally construed. Second, the contract must contain a provision stating that attorneys' fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must be the party who "prevail[ed] on the contract," meaning (with exceptions not relevant here) "the party who recovered a greater relief in the action on the contract." Cal. Civ.Code § 1717(b)(1).

*Id.*, at 1087-88 (internal citation omitted). "Under California law, an action is 'on a contract' when a party seeks to enforce, or avoid enforcement of, the provisions of the contract." *Id.*, at 1088.

Although past interpretations of the phrase "action on a contract" have been murky, two recent decisions by the Ninth Circuit Court of Appeals shed some light on which disputes fall within the purview of Cal. Civ. Code § 1717(a). In *Penrod*, prepetition, the debtor and a lender entered into an installment sale contract when the debtor purchased a vehicle. *Penrod*, 802 F.3d at 1086. The contract granted the lender a security interest in the vehicle. *Id.* The debtor then filed a chapter 13 petition and, in her proposed chapter 13 plan, bifurcated the lender's claim into a secured claim in the amount of \$16,000 and an unsecured claim in the amount of \$10,000. *Id.* The lender objected to the proposed chapter 13 plan, arguing that its entire claim should be treated as secured in accordance with the "hanging paragraph" below 11 U.S.C. § 1325(a)(9), which prohibits bifurcation of claims that are secured by a "purchase money security interest" in a vehicle. *Id.* Eventually, the bankruptcy court decided that the lender was limited to a \$19,000 secured claim and a \$7,000 unsecured claim. *Id.*, at 1087. After an appeal by the lender, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed the bankruptcy court's ruling. *Id.*

The debtor then filed a motion to recover attorneys' fees she incurred opposing the lender's objection to confirmation. *Id.* The debtor relied on a provision in the installment sale contract which read, "You will pay our reasonable costs to collect what you owe, including attorney fees, court costs, collection agency fees, and fees paid for other reasonable collection efforts." *Id.* Pursuant to this language, the debtor argued she was entitled to attorneys' fees under Cal. Civ. Code § 1717(a). *Id.* The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

---

2:00 PM

CONT...

**Deborah Lois Adri**

**Chapter 11**

bankruptcy court disagreed, holding that the action was not an action "on a contract" because the action at issue in *Penrod* turned on a question of federal bankruptcy law. *Id.* The district court affirmed the bankruptcy court. *Id.*

The Ninth Circuit Court of Appeals disagreed, explaining that:

[The lender] sought to enforce the provisions of its contract with [the debtor] when it objected to confirmation of her proposed Chapter 13 plan. The plan treated [the lender's] claim as only partially secured, but [the lender] insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the contract—in particular, the provision in which [the debtor] granted a security interest in her Taurus to secure "payment of all you owe on this contract." (Had the contract not granted [the lender] a security interest in the car, [the lender] could not have asserted a secured claim for *any* amount. *See* 11 U.S.C. § 506(a).) The security interest conveyed by the contract covered not just the funds [the debtor] borrowed to pay for the Taurus, but also the funds she borrowed to refinance the negative equity in the Explorer. The sole issue in the hanging-paragraph litigation was whether this provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude the negative-equity portion of the loan. *See In re Penrod*, 611 F.3d at 1159–61 & n. 2. By prevailing in that litigation, [the debtor] obtained a ruling that precluded [the lender] from fully enforcing the terms of the contract.

*Id.*, at 1088. On this analysis, the Court of Appeals believed the objection to the debtor's confirmation of her chapter 13 plan qualified as an "action on a contract" for purposes of Cal. Civ. Code § 1717(a). *Id.*

The Court of Appeals decided that the bankruptcy court's and district court's interpretation of Cal. Civ. Code § 1717(a) was too narrow. *Id.* Those courts had concluded that Cal. Civ. Code § 1717(a) "applies only if the party defeats enforcement under non-bankruptcy law" and, because the debtor had prevailed under bankruptcy law, Cal. Civ. Code § 1717(a) did not apply. *Id.* The Court of Appeals held that California law did not prescribe any such limitation to Cal. Civ. Code § 1717(a). *Id.*, at 1089.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

After *Penrod*, the Ninth Circuit Court of Appeals issued a decision further clarifying the boundaries of Cal. Civ. Code § 1717(a). *Bos v. Bd. of Trustees*, 818 F.3d 486 (9th Cir. 2016). In *Bos*, the debtor was an employer obligated to make payments to certain employee pension funds administered by the Board of Trustees in accordance with trust agreements. *Id.*, at 488. The debtor failed to make the requirement payments and, as a result, signed a promissory note agreeing to make monthly contributions to the funds. *Id.* The debtor was unable to make these payments. *Id.* As such, after the Board of Trustees sued the debtor, an arbitrator ruled the debtor had violated the agreement, and a California state court confirmed the arbitration award in a judgment. *Id.*

Around this time, the debtor filed a chapter 7 petition. *Id.* Subsequently, the Board of Trustees filed an adversary proceeding requesting nondischargeability of the judgment pursuant to 11 U.S.C. § 523(a)(4). *Id.* The bankruptcy court held that the judgment was nondischargeable under 11 U.S.C. § 523(a)(4) because the debtor was a fiduciary under the Employee Retirement Income Security Act ("ERISA"). *Id.*, at 489. The district court affirmed. *Id.* On appeal, the Court of Appeals reversed, holding that the debtor was not a fiduciary under ERISA and that 11 U.S.C. § 523(a)(4) did not apply to the debtor. *Id.* The debtor then moved to recover attorneys' fees pursuant to Cal. Civ. Code § 1717 and, alternatively, under ERISA. *Id.*

The Court of Appeals first referenced several prior decisions by the BAP and California courts:

The California Supreme Court has explained that "section 1717 applies only to actions that contain at least one contract claim," and that "[i]f an action asserts both contract and tort or other noncontract claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." *Santisas*, 17 Cal.4th at 615, 71 Cal.Rptr.2d 830, 951 P.2d 399. Consistent with *Santisas*, we have previously held that a nondischargeability action is "on a contract" within section 1717 if "the bankruptcy court needed to determine the enforceability of the ... agreement to determine dischargeability." *In re Baroff*, 105 F.3d 439, 442 (9th Cir.1997).

The Bankruptcy Appellate Panel of the Ninth Circuit has held that *Santisas* and relevant Ninth Circuit cases establish not just a rule

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT...

**Deborah Lois Adri**

**Chapter 11**

of inclusion, but also a rule of exclusion: that "if the bankruptcy court did *not* need to determine whether the contract was enforceable, then the dischargeability claim is *not* an action on the contract within the meaning of [California Civil Code] § 1717." *In re Davison*, 289 B.R. 716, 723 (9th Cir. BAP 2003) (emphasis added).

*Id.* The Court of Appeals then explicitly adopted the BAP's interpretation of Cal. Civ. Code § 1717, noting that the construction "accords with the common sense meaning of the phrase 'on a contract' and finds ample support in our precedents." *Id.*, at 490. The *Bos* court then cited three prior decisions by the Court of Appeals that supported the BAP's interpretation above. *Id.*

First, the Court of Appeals cited *In re Johnson*, 756 F.2d 738 (9th Cir. 1985), for the proposition that an action is not an action "on a contract" if "the action neither litigated the validity of the contract nor required the bankruptcy court to consider 'the state law governing contractual relationships.'" *Bos*, 818 F.3d at 490 (citing *Johnson*, 756 F.2d at 740). "More broadly, [the Court of Appeals] instructed that when federal and not state law governs the substantive issues involved in the adversary proceeding, [the court] may not award attorneys' fees pursuant to a state statute." *Id.* (citing *Johnson*, 756 F.2d at 741).

Next, the Court of Appeals cited *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980), in which the Court of Appeals had held that a nondischargeability action in bankruptcy was not "on a contract" under an Oregon fee-shifting statute identical to Cal. Civ. Code § 1717. "The reason, we later explained, was that 'the bankruptcy court did not adjudicate the validity of the note in determining whether the debt was dischargeable,' and so the note was merely 'collateral to the non-dischargeability proceeding.'" *Bos*, 818 F.3d at 490 (citing *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (citing *Fulwiler*, 524 F.2d at 909-10)).

Finally, the Court of Appeals referenced *In re Hashemi*, 104 F.3d 1122 (9th Cir. 1996), in which the Court of Appeals relied on *Baroff* and held that "a creditor's 'dischargeability claim [was] not an action on the contract,' within the meaning of the contract itself, because 'the bankruptcy court did not need to determine the enforceability of the ... agreement to determine dischargeability.'" *Bos*, 818 F.3d at 490 (quoting *Hashemi*, 104 F.3d at 1126).

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

Based on these authorities, the *Bos* court explained:

In light of our precedents, we are persuaded that the action underlying Bos's fee request—the nondischargeability proceeding that began in bankruptcy court—was not an action "on a contract" within the meaning of section 1717. As the parties agree, "[t]here was no 'breach of contract' claim in the Trust Funds' adversary complaint." The nondischargeability proceeding arose entirely under the federal Bankruptcy Code, and in no way required the bankruptcy court to determine whether or to what extent the Trust Agreements or the Note were enforceable against Bos, or whether Bos had violated their terms. Those questions had been answered in arbitration, and confirmed by a State Court; indeed, in the nondischargeability action Bos conceded that such contracts were valid and that he had breached them. The litigation from that point forward asked only whether federal bankruptcy law forbade Bos from discharging the debts everyone agreed he owed to the Funds. Such litigation is collateral to a contract rather than "on a contract," and as a consequence Bos may not use section 1717 to recover the fees he incurred in pursuing it.

*Id.* The *Bos* court distinguished *Penrod* on the basis that, in *Penrod*, the central question presented to the court was whether the court should enforce a provision in the parties' agreement or whether the debtor could avoid enforcement in accordance with the Bankruptcy Code. *Id.*, at 490-91. In *Bos*, the nondischargeability issue did not present any issues regarding the validity or enforceability of the subject agreement. *Id.*, at 491.

After *Bos*, a bankruptcy court within the Ninth Circuit addressed the issue of whether a nondischargeability action under 11 U.S.C. § 523(a)(2)(A) may be considered an action "on a contract" for purposes of Cal. Civ. Code § 1717. *In re Zarate*, 567 B.R. 176 (Bankr. N.D. Cal. 2017). In *Zarate*, creditors initiated an adversary proceeding against the debtors alleging that the debtors "'misrepresented facts, concealed and failed to disclose' material facts in order to induce plaintiffs to enter into the" subject agreement. *Id.*, at 181. The creditors requested damages in the amount of \$1.34 million plus prejudgment interest, contractual attorneys' fees and costs. *Id.* Subsequently, the court entered a stipulated judgment through which the debtors agreed to a nondischargeable judgment in the amount of \$831,018.31. *Id.* The

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

creditors then filed a motion for an award of attorneys' fees based on the parties' contract, which included a provision that stated: "In event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith." *Id.*, at 181-83.

The *Zarate* court first noted that "under established California law, a tort claim does not 'enforce' a contract." *Id.*, at 184 (citing *Stout v. Turney*, 22 Cal.3d 718, 730 (1978); and *Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998)). Next, the court found that "the dischargeability of a debt under § 523(a)(2)(A) resolves a tort claim." *Id.* (citing *In re Candland*, 90 F.3d 1466, 1470 (9th Cir. 1996)). The court did not find persuasive the plaintiffs' arguments that the nondischargeability action could be interpreted as one "on the contract." *Id.* The court held that, unlike *Penrod*, the court did not have to assess the enforceability of the subject agreement in *Zarate*:

Here, whether the APA or the 2009 Agreement were enforceable was never a question and the interpretation of these agreements was never an issue. Based on the above, this was not an action on a contract. The APA and the 2009 Agreement provided the context out of which this dispute arose, but this was not an action on a contract. Civil Code § 1717 does not provide a basis to award attorneys' fees.

*Id.*, at 185. See also *In re Fulwiler*, 624 F.2d 908 (9th Cir. 1980) (holding that the action was not "on the contract" where the bankruptcy court "did not adjudicate the validity of the note in determining whether the debt was dischargeable" and instead determined "that the debtors obtained the loan evidenced by the note through fraud"); cf. *In re Baroff*, 105 F.3d 439, 442 (9th Cir. 1997) (finding an action was "on a contract" where "the bankruptcy court needed to determine the enforceability of the settlement agreement to determine dischargeability"); and *In re Arciniega*, 2016 WL 455428 (B.A.P. 9th Cir. Feb. 3, 2016) (where the debtor used the subject agreement to support her defense and the bankruptcy court had to interpret a disputed phrase in the agreement in connection with an action under § 523(a)(2)(A) and (a)(6), the action was "on a contract").

**1. The 2004 Application, the Protective Order Motion and the Motion to**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT...

**Deborah Lois Adri**  
*Extend Time*

**Chapter 11**

The 2004 Application, the Protective Order Motion and the Order Extending Time were not actions "on the contract" for purposes of Cal. Civ. Code § 1717. In determining whether to grant the 2004 Application, the Protective Order Motion and the Motion to Extend Time, the Court did not need to determine the validity or enforceability of the Agreement. *See Bos*, 818 F.3d at 490-91. Nor did the Court need to consider California law governing contractual relationships. *Id.* As such, the 2004 Application, the Protective Order Motion and the Order Extending Time were not actions "on the contract" for purposes of Cal. Civ. Code § 1717.

**2. The Claim and Objection**

**i. The Objection is an Action "On the Contract"**

The Objection is an action "on the contract" for purposes of Cal. Civ. Code § 1717. *See In re McGaw Prop. Mgmt., Inc.*, 133 B.R. 227, 227–28 (Bankr. C.D. Cal. 1991); *In re Dowent Family LLC*, No. 2:13-BK-12977-RK, 2018 WL 3468986, at \*5 (Bankr. C.D. Cal. July 13, 2018); *In re Brand Affinity Techs., Inc.*, No. 8:14-BK-17244-SC, 2016 WL 8309669, at \*5 (Bankr. C.D. Cal. Apr. 29, 2016); *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 492 (Bankr. C.D. Cal. 2013). "[C]laims litigation in bankruptcy is civil litigation." *Brand Affinity Techs., Inc.*, 2016 WL 8309669, at \*5. "The filing of a proof of claim is analogous to filing a complaint in the bankruptcy case." *In re Brosio*, 505 B.R. 903, 912 (B.A.P. 9th Cir. 2014). "And a claim objection by the debtor is analogous to an answer." *Id.*

Although litigation of the Claim and the Objection was to determine whether Schuller held an allowable claim against Debtor's bankruptcy estate, the dispute was an action "on the contract." Schuller by filing the Claim, based on the contract, was seeking to enforce the Agreement and recover damages for breach of the Agreement from Debtor's bankruptcy estate and Debtor, by filing the Objection, disputed Schuller's claim or right to enforce the Agreement. In determining whether to sustain the Objection, the Court had to determine the enforceability of the Agreement against Debtor. As such, the litigation of the Objection was an action "on the contract" for purposes of Cal. Civ. Code § 1717.

In the Opposition, Schuller argues that the Claim was not based on the Agreement, but rather on an account stated. However, the Court has already determined that the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

gravamen of Schuller's claim was breach of contract [doc. 148]. Schuller further argues that to the extent any services were related to a contract, they were not determined on the merits, but rather based on the statute of limitations, a procedural mechanism, which is not on the contract. Schuller cites *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017) for this proposition.

In *Midland Funding, LLC* the creditor filed a proof of claim in the debtor's chapter 13 bankruptcy case, asserting that the debtor owed the creditor credit-card debt and noting that the last time that any charge appeared on the debtor's account was more than ten years ago. *Id.* at 1408. The relevant statute of limitations under Alabama law is six years. *Id.* at 1408-09. The debtor objected to the claim and the bankruptcy court disallowed it. *Id.* at 1409. The debtor then brought a lawsuit against the creditor seeking actual damages, statutory damages, attorneys' fees and costs for a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k (the "FDCPA"). *Id.* at 1411. The debtor claimed that the creditor filing of a proof of claim on an obviously time-barred debt was "false," "deceptive," "misleading," "unconscionable" and "unfair" within the meaning of the FDCPA, 15 U.S.C. §§ 1692e, 1692f. *Id.* 1409. The Supreme Court of the United States held that "filing (in a Chapter 13 bankruptcy proceeding) a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act." *Id.* at 1415-16.

*Midland Funding, LLC* is distinguishable from this case. *Midland Funding, LLC* involved attorneys' fees under the FDCPA. The FDCPA allows for an award of reasonable attorneys' fees in a successful action for a violation of its provisions. In order to find a violation of its provisions, the debt collection practice must be false, deceptive, misleading, unfair or unconscionable. In contrast, Cal. Civ. Code § 1717 contains no such prerequisite before awarding attorneys' fees. Pursuant to Cal. Civ. Code § 1717(a), the three conditions that must be met are: (1) the action in which the fees are incurred must be an action "on a contract;" (2) the contract must contain a provision stating that attorneys' fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party; and (3) the party seeking fees must be the party who prevailed on the contract. *Penrod*, 802 F.3d at 1087-88.

Finally, "a party is entitled to attorney fees under section 1717 'even when the party prevails on grounds the contract is inapplicable, invalid, unenforceable or nonexistent, if the other party would have been entitled to attorneys' fees had it prevailed.'" *Hsu v.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

*Abbara*, 9 Cal. 4th 863, 870, 891 P.2d 804 (1995) (citing [\*Bovard v. American Horse Enterprises, Inc.\*](#), 201 Cal.App.3d 832, 842 (1988)). Moreover, several courts have found that dismissal of an action based on the expiration of the statute of limitations is treated as a dismissal on the merits for purposes of awarding attorneys' fees under Cal. Civ. Code § 1717. *St. Julien v. Bank of Am.*, No. CV142410FMOMRWX, 2016 WL 9211677, at \*1 (C.D. Cal. Aug. 31, 2016); *see also Yenidunya Invs., Ltd. v. Magnum Seeds, Inc.*, 2012 WL 538263, \*2 (E.D. Cal. 2012), *aff'd*, 562 Fed.Appx. 560 (9th Cir. 2014) ("Dismissals based on the expiration of the statute of limitations are treated as dismissal on the merits for the purpose of awarding attorneys' fees."); *Grolsche Bierbrouwerij Nederland, B.V. v. Dovebid, Inc.*, 2011 WL 5080175, \*1 & \*3 (N.D. Cal. 2011) (defendants were prevailing party under Cal. Civ. Code § 1717 on the grounds that plaintiff's claim was time-barred). As such, litigation of the Claim and the Objection was an action "on the contract" for purposes of Ca. Civ. Code § 1717.

**ii. *There is an Attorneys' Fees Provision in the Agreement***

Regarding the second condition of Cal. Civ. Code § 1717, paragraph 9 of the Agreement contains a provision stating that attorneys' fees incurred during any litigation, arbitration or proceeding arising out of, or relating to the Agreement must be awarded to the prevailing party. The provision in the Agreement is sufficient to satisfy the second condition of Cal. Civ. Code § 1717.

In the Opposition, Schuller argues mediation was a condition precedent to seeking attorneys' fees under the Agreement. Schuller contends that paragraph 19 of the Agreement creates a condition precedent, and that Debtor did not satisfy the condition precedent to allow an award of attorneys' fees. However, nowhere in paragraph 19 of the Agreement does it state that mediation is a condition precedent to the award of attorneys' fees under paragraph 9. Further, any requirement of mediation was waived when Schuller filed the 2004 Application and the Claim without first seeking mediation.

**iii. *Debtor is the Prevailing Party***

Regarding the third condition of Cal. Civ. Code § 1717, "in deciding whether there is a 'party prevailing on the contract,' the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT...

Deborah Lois Adri

Chapter 11

similar sources." *Hsu v. Abbara*, 9 Cal. 4th 863, 876 (1995). "The prevailing party determination is to be made only upon final resolution of the contract claims and only by 'a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.'" *Id.* (citing *Bank of Idaho v. Pine Avenue Associates*, 137 Cal.App.3d 5, 15 (1982)).

"*In determining litigation success*, courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations.'" (emphasis in original) *Id.* at 877. "For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective." *Id.* "But when one party obtains a 'simple, unqualified win' on the single contract claim presented by the action, the trial court may not invoke equitable considerations unrelated to litigation success, such as the parties' behavior during settlement negotiations or discovery proceedings, except as expressly authorized by statute." *Id.*

"When a defendant obtains a simple, unqualified victory by defeating the only contract claim in the action, section 1717 entitles the successful defendant to recover reasonable attorney fees incurred in defense of that claim if the contract contained a provision for attorney fees." *Id.* at 877. "The trial court has no discretion to deny attorney fees to the defendant in this situation by finding that there was no party prevailing on the contract." *Id.*

Here, Debtor is the prevailing party. Debtor's litigation objective was to defeat the Claim. The determination of the allowance of the Claim was a final resolution of the only contract claim in the action. Further, sustaining the Objection was an unqualified victory by Debtor because the Court's decision was purely good news for Debtor and bad for Schuller. Debtor obtained all relief requested on the only contract claim in the action. Thus, Debtor must be regarded as the prevailing party. As such, Debtor is entitled to attorneys' fees pursuant to Cal. Civ. Code § 1717 for services provided in connection with the Claim and the Objection.

***B. CCP §§ 1021 and 1032***

Although Debtor is not entitled to attorneys' fees pursuant to Cal. Civ. Code § 1717 for the potential nondischargeability action, Debtor may be entitled to attorneys' fees through CCP § 1021 based on the language in the Agreement. Pursuant to CCP §

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**  
1021—

**Chapter 11**

Except as attorneys' fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

Pursuant to CCP § 1032(b)—

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Under CCP § 1033.5(a), the following items are allowable as costs pursuant to § 1032:

(10) Attorneys' fees, when authorized by any of the following:

- (A) Contract.
- (B) Statute.
- (C) Law.

CCP "§ 1032(b) entitles a 'prevailing party' to 'recover costs' as a matter of right 'in any action or proceeding.' Costs may include attorneys' fees when authorized by contract, even when the action is not 'on a contract.'" *In re Mac-Go Corp.*, 541 B.R. 706, 715 (Bankr. N.D. Cal. 2015) (citing CCP § 1033.5(a)(10)).

***i. The Language of the Agreement***

Here, the relevant provision in the Agreement states: "The prevailing party in any litigation, arbitration or proceeding *arising out of, or relating to*, this Agreement...must be awarded all actual attorney's fees and cost it incurred." Agreement, ¶ 9 (emphasis added). Several California courts have held that the phrase "arising out of" is broad enough to encompass both tort and contract actions. *See Santisas v. Goodin*, 17 Cal.4th 599, 603 (1998); *Childers v. Edwards*, 48 Cal.App.4th

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

1544 (1996) (holding that attorneys' fees provision stating that "any legal action, proceeding or arbitration *arising out of this agreement*" would provide the prevailing party to reasonable attorneys' fees encompasses tort actions) (emphasis added); *Lerner v. Ward*, 13 Cal.App.4th 155 (Ct. App. 1993); *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 1341 (Ct. App. 1992).

Here, as in *Xuereb* and *Lerner*, the language in the Agreement is broad enough to encompass a nondischargeability action based on fraud. The Agreement explicitly provides for attorneys' fees in "any litigation, arbitration or proceeding *arising out of this Agreement*." Agreement, ¶ 9 (emphasis added). The "arising out of" language in the Agreement mirrors the language in the attorneys' fees provision in *Lerner* and is the exact same phrase held by several courts to be broad enough to encompass tort actions.

However, Schuller never filed a nondischargeability action against Debtor. Schuller only filed the 2004 Application and the Motion to Extend Time. According to the language in the Agreement, attorneys' fees must be awarded for any litigation, arbitration or proceeding. The 2004 Application, the Protective Order Motion and the Motion to Extend Time are clearly not arbitration. As discussed below, the 2004 Application and the Motion to Extend Time are similarly not considered litigation, but rather prelitigation.

"Rule 2004 is the basic discovery device in bankruptcy cases." *In re Mastro*, 585 B.R. 587, 596–97 (B.A.P. 9th Cir. 2018). "It allows broad examination relating to 'the 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.'" *Id.*; Fed. R. Bankr. P. 2004(b). "As an investigatory tool, its nature is inquisitory rather than accusatory, although information discovered by its employment may presage litigation." *In re Symington*, 209 B.R. 678, 683–84 (Bankr. D. Md. 1997).

"A Rule 2004 examination is undertaken *prelitigation*, that is, before the filing of a lawsuit or motion, whereas discovery in the context of the Federal Rules of Civil Procedure is *pretrial*, that is, after the filing of a complaint or motion, but before a hearing on dispositive motions or trial on the merits." *Id.*; see also *In re Dinubilo*, 177 B.R. 932, 941 (E.D. Cal. 1993). "A Rule 2004 examination may even be conducted in the absence of a pending adversary proceeding or contested matter, although it

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

obviously requires the pendency of a bankruptcy case." *Symington*, 209 B.R. at 683–84. As such, a Rule 2004 examination "is independent of a complaint or contested matter." *Id.* "Once a contested matter is pending, discovery requests are granted under Rule 9014, which invokes the procedural safeguards of the Federal Rules of Civil Procedure." *Dinubilo*, 177 B.R. at 941; *see also In re French*, [145 B.R. 991, 992 \(Bankr.D.S.D.1992\)](#) ("If a contested matter or adversary proceeding is pending, Rule 2004 should not be used, but rather, the various discovery provisions of the Federal Rules of Civil Procedure should apply.").

As discussed above, the 2004 Application is considered prelitigation as it is just an investigatory tool that allows examination into the liabilities and financial condition of the debtor. Similarly, the Protective Order Motion, which was filed in response to the 2004 Application, is also prelitigation. Moreover, the Motion to Extend Time is also a prelitigation motion because in the motion, Schuller requested more time to file a nondischargeability action against Debtor. No such nondischargeability action was ever filed by Schuller. As such, the 2004 Application, the Protective Order Motion and the Motion to Extend are not considered litigation, but rather prelitigation.

***ii. Prevailing Party***

Even if the 2004 Application, the Protective Order Motion and the Motion to Extend Time were proceedings under the Agreement, Debtor is not the prevailing party on any of those motions. Pursuant to CCP § 1032(a)(4)—

"Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

"Where a party falls squarely within one of these four definitions, a trial court has little discretion in determining the prevailing party, particularly when there is a party with a 'net monetary recovery.'" *Mac-Go Corp.*, 541 B.R. at 715 (citing *Goodman v.*

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

*Lozano*, 47 Cal.4th 1327 (2010)). Otherwise, the statute "leaves the determination of the prevailing party to the trial court's discretion." *Heimlich v. Shivji*, 12 Cal.App.5th 152, 160 (Ct. App. 2017).

"[S]ection 1032(a)(4) defines the party with a 'net monetary recovery' as the 'prevailing party.' The word 'recover' means 'to gain by legal process' or 'to obtain a final legal judgment in one's favor.'" *deSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal.4th 1140, 1153 (2016) (citing *Goodman v. Lozano*, 47 Cal.4th 1327, 1334 (2010)).

Regarding the 2004 Application and the Protective Order Motion, Debtor does not fall squarely within one of the four definitions under CCP § 1032(a)(4). Although the court can deny or grant a Rule 2004 application, there is not a winner or loser as with most litigation because a Rule 2004 examination is merely an investigatory tool and occurs before litigation. Further, the Court did not decide the 2004 Application and the Protective Order Motion on the merits, but rather denied them as moot as a result of lack of standing. Consequently, the determination of the prevailing party is left to this Court's discretion. The Court finds that neither party prevailed on the 2004 Application nor the Protective Order Motion.

Regarding the Motion to Extend Time, the Court granted the Motion in favor of Schuller. As such, Debtor cannot be the prevailing party under CCP § 1032(a)(4) on that motion. Thus, Debtor is not entitled to attorneys' fees for services provided in connection with the 2004 Application, the Protective Order Motion and the Motion to Extend Time.

***C. Reasonableness of Fees***

Debtor bears the burden of proving that the fees sought are reasonable. *Center for Biological Diversity v. Cty. of San Bernardino*, 188 Cal.App.4th 603, 615 (Ct. App. 2010); *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). Both California state courts and the Ninth Circuit Court of Appeals customarily assess the reasonableness of attorneys' fees utilizing the "lodestar" approach where the number of hours reasonably expended is multiplied by a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006).

"A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT...

**Deborah Lois Adri**

**Chapter 11**

unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "After computing the lodestar, the court must assess whether additional considerations require adjustment of the figure, such as the novelty or complexity of the issues, the skill and experience of counsel, the quality of representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at \*4.

Although Debtor is a prevailing party entitled to attorneys' fees and costs for services in connection with the Claim and the Objection, those fees and costs must be reasonable. In the Declaration of Robert M. Yaspan (the "Yaspan Decl.") [doc. 162], Debtor's attorney testifies that Debtor incurred attorneys' fees and costs totaling \$20,378.00 for services in connection with the Claim, the Objection and the Motion. Yaspan Decl., ¶¶ 10-11. Mr. Yaspan states that Debtor incurred \$14,215.00 in fees to prosecute the Objection and \$6,163.00 in fees to prosecute the Motion. Yaspan Decl., ¶¶ 10-11. Mr. Yaspan also anticipates incurring \$1,535.00 to file a reply to the Opposition and to appear at the hearing on the Motion. Yaspan Decl., ¶ 19. Mr. Yaspan's rate is \$595.00 per hour. Yaspan Decl., ¶ 12. This is reasonable for an attorney in Los Angeles with Mr. Yaspan's experience. Further, the Court has already reviewed Mr. Yaspan's billing records in connection with the Fee Application. The Court reviewed the fees incurred for services relating to the Claim and the Objection through July 24, 2018, and found that the fees were reasonable. The remaining fees relating to the Claim, the Objection and the Motion (Yaspan Decl., Exh. B) appear reasonable.

***D. Schuller's Request for Setoff/Recoupment***

In the Opposition, Schuller argues that it is entitled to utilize its claim as a setoff. Schuller contends that while setoff under 11 U.S.C. § 553 typically applies to mutual prepetition claims, recoupment provides that prepetition claims may be equitably setoff against postpetition claims.

"Setoff allows adjustments of mutual debts arising out of separate transactions between the parties." *In re Harmon*, 188 B.R. 421, 425 (B.A.P. 9th Cir. 1995). "To invoke setoff, § 553 requires that each of the mutual debts arise before commencement of the case." *Id.* Further, setoff is limited to the by the provisions in 11 U.S.C. § 553, including that setoff is not applicable when the "claim by such creditor against debtor has been disallowed." 11 U.S.C. § 553(a)(1). Here, Debtor's

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... Deborah Lois Adri

Chapter 11

claim for attorneys' fees arose postpetition and Schuller's claim was disallowed. As such, setoff is not applicable.

"Equitable recoupment is a common law doctrine that is not expressly recognized in the Bankruptcy Code, but is preserved through judicial decisions." *In re Process Am., Inc.*, 588 B.R. 82, 105 (Bankr. C.D. Cal. 2018). "Recoupment 'is the setting up of a demand arising from the *same transaction* as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim.'" *Id.* (quoting [Newbery Corp. v. Fireman's Fund Ins. Co.](#), 95 F.3d 1392, 1399 (9th Cir.1996) (quoting 4 *Collier on Bankruptcy*, ¶ 553.03, at 553–15 (15th ed.1995)) (emphasis in original). "It involves 'netting out debt,' and is allowed 'because it would be inequitable not to allow the defendant to recoup those payments against the debtor's subsequent claim.'" *Id.* (quoting *Newbery*, 95 F.3d at 1401). "In recoupment, the respective claims may arise either before or after the commencement of the bankruptcy case, but they must arise out of the same transaction." *Id.*

However, a party's "substantive right to setoff and recoupment under § 553 is governed by California law." *In re Adams*, No. 8:09-BK-12450-TA, 2018 WL 3748816, at \*9 (B.A.P. 9th Cir. Aug. 7, 2018). "California law clearly recognizes the right to setoff, setting forth procedures for setoff in Cal. Code Civ. Proc. § 431.70, and a defense of equitable recoupment is a species of setoff." *Id.*

Pursuant to Cal. Code Civ. Proc. § 431.70—

Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

"demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

Here, the Court found that the Claim was barred by the statute of limitations. Moreover, Debtor's demand for attorneys' fees arises from a separate transaction as the Claim. Debtor's claim for attorney's fees arose more than ten years after Schuller had been terminated. While the Motion is related to the Agreement for purposes of the attorneys' fees provision in paragraph 9 of the Agreement, the right to an attorneys' fees award did not arise from the same transaction as the breach of contract alleged in the Claim. *See, e.g., In re University Medical Center*, 973 F.2d 1065, 1081 (3rd Cir. 1992)(holding that recoupment not appropriate when debts at issue did not arise out of single integrated transaction). As such, recoupment does not apply in this case.

***E. Alleged Forgery of Moshe Adri's Signature on the Agreement***

In the Opposition, Schuller argues that subsequent to the filing of the Motion, Schuller was notified that Debtor forged her ex-husband's signature on the addendum to the Agreement rendering it voidable. *See also* Declaration of Moshe Adri, doc. 177. However, the original Agreement was for representation of Debtor only [doc. 143-3, Exh. 1]. The addendum to the Agreement only altered the identification of the parties to the Agreement in that Moshe Adri was added as a party to the Agreement. Further, Debtor disputes that she forged her ex-husband's signature on the addendum to the Agreement. Declaration of Deborah Adri, doc. 182.

Even if Debtor forged Moshe Adri's signature on the addendum to the Agreement, that would not make the Agreement voidable as between Debtor and Schuller. Schuller has not alleged that Debtor's signature on the agreement is forged. As such, based on the evidence before the Court at this time, it appears that the attorneys' fee provision in the Agreement is valid and enforceable as between Debtor and Schuller.

**III. CONCLUSION**

The Court will deny the Motion as to fees and costs incurred in connection with the 2004 Application, the Protective Order Motion and the Motion to Extend Time. The Court will grant the Motion as to fees and costs incurred in connection with the Claim, the Objection and the Motion in the amount of \$20,378.00.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

Debtor must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

---

2:00 PM

1:18-11538 Momentum Development LLC

Chapter 7

#9.00 Motion by DCA Drilling & Construction, Inc. for FRBP 2004 examination of and production of documents by the person most knowledgeable of debtor Momentum Development, LLC

fr. 11/1/18;

Docket 15

\*\*\* VACATED \*\*\* REASON: Withdrawal of motion filed 11/27/18.

**Tentative Ruling:**

**11/1/2018 Tentative:**

Deny.

**I. BACKGROUND**

On June 19, 2018, Momentum Development, LLC ("Debtor") filed a voluntary chapter 7 petition. In its schedule E/F, Debtor listed a claim in favor of DCA Drilling & Construction, Inc. ("DCA") in the amount of \$200,000.

On September 25, 2018, DCA filed a motion to examine Debtor pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 2004 (the "Motion") [doc. 15]. In the Motion, DCA requests a Rule 2004 examination to investigate alleged transfers made by Debtor to another entity. On September 28, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 16], asserting that DCA would not have standing to recover any such transfers on behalf of the estate. On October 25, 2018, DCA filed a reply to the Opposition (the "Reply") [doc. 19]. In the Reply, DCA again states that its purpose for requesting a Rule 2004 examination is to investigate potential transfers from Debtor to another entity. DCA also notes that any such investigation may aid the chapter 7 trustee.

**II. ANALYSIS**

Pursuant to Rule 2004—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... **Momentum Development LLC**

**Chapter 7**

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the 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. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

"Rule 2004 is the basic discovery device in bankruptcy cases. It allows broad examination relating to 'the 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 discharge.'" *In re Mastro*, 585 B.R. 587, 596-97 (B.A.P. 9th Cir. 2018) (citing *In re Subpoena Duces Tecum*, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011)). "As the Rule's text makes clear, the scope of a Rule 2004 examination is 'unfettered and broad'; the rule essentially permits a 'fishing expedition.'" *Id.*, at 597 (citing *Subpoena Duces Tecum*, 461 B.R. at 829). However, "Rule 2004 is not without its limits." *Id.*

"When a party seeks to conduct a 2004 examination, and the party to be examined objects, the former must show that it has 'good cause' to conduct the examination." *Subpoena Duces Tecum*, 461 B.R. at 829. "Generally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* (internal quotation omitted). "Once the examiner establishes the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT... **Momentum Development LLC**

**Chapter 7**

existence of ‘good cause,’ the burden shifts back to the objecting party to show that examination would be oppressive or burdensome." *Id.* "The opportunity for such an examination is available to ‘any party in interest,’ Fed. R. Bankr.P. Rule 2004(a), but whether or not the court allows the examination is a matter committed to its discretion and requires a sufficient cause." *In re J & R Trucking, Inc.*, 431 B.R. 818, 821 (Bankr. N.D. Ind. 2010).

For instance, in *Mastro*, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") found that the chapter 7 trustee could issue a consent directive in connection with a Rule 2004 motion because such a request is tied into the chapter 7 trustee’s statutory investigative duties under 11 U.S.C. § 704. *Mastro*, 585 B.R. at 597. The BAP stated:

[W]e stop short of a determination that Rule 2004, in isolation, would justify issuance of a consent directive to anyone other than a chapter 7 trustee. But where, as here, it enables the financial affairs investigation required by the Code, it is firmly tethered to the Trustee's § 704 statutory duties. Thus, issuance of a consent directive in connection with a Rule 2004 examination request is entirely consistent with the broad inquiry into a debtor's financial affairs authorized by the Code.

*Id.* Unlike *Mastro*, here, DCA does not have a statutory duty to investigate transfers from Debtor to third parties, and, even if DCA does uncover any such transfers, does not have the authority to avoid and recover such transfers for the benefit of the estate. That authority lies with the chapter 7 trustee. *See* 11 U.S.C. § 547-550.

*J & R Trucking* is particularly instructive in this case. There, creditors moved to conduct a Rule 2004 examination for three reasons: (A) "to determine whether there are any other trades or businesses which were under common control with the debtor on the date it withdrew from [a] pension fund and, therefore, which might be liable for the debtor’s obligations to that fund;" (B) "to determine if [another entity] might be liable, as a successor to the debtor, for the debtor’s obligations to" the creditors; and (C) to obtain "information concerning transfers made prior to the petition, which might be recoverable by the trustee." *J & R Trucking*, 431 B.R. at 819-20. In assessing whether creditors could obtain this information through a Rule 2004 examination, the *J & R Trucking* court, like the BAP in *Mastro*, discussed the broad

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Momentum Development LLC**

**Chapter 7**

use of Rule 2004 examinations by chapter 7 trustees tasked with investigating debtors:

The broad scope of a 2004 examination arises out of its purpose. Particularly in chapter 7 cases, such as the ones before the court, it is an investigatory device trustees can use in order to quickly gather the information they need to do their job properly. *See, Dinubilo*, 177 B.R. at 940; *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *In re Valley Forge Plaza Associates*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990); *Wilcher*, 56 B.R. at 433–34; *In re Good Hope Refineries, Inc.*, 9 B.R. 421, 423 (Bankr. Mass. 1981). That job, of course, is to investigate the debtor, and the assets of and claims against the bankruptcy estate, turn the assets into cash and distribute those funds to creditors, all as expeditiously as possible. 11 U.S.C. § 704. Ideally, those with knowledge of such things will voluntarily cooperate with the trustee and give the trustee access to the information they have concerning the debtor's affairs. Unfortunately, that is not always the case, and so Rule 2004 provides a vehicle by which the trustee can compel that "cooperation." It allows the trustee to do the necessary investigatory work without the need for initiating formal litigation which would trigger the traditional discovery tools. Indeed, one purpose for such an examination is to give the trustee the information needed to determine whether litigation should be filed.

*Id.*, at 821-22. The *J & R Trucking* court then held that the same reasoning did not apply to creditors:

In assessing the propriety of a request for a 2004 examination, its purpose as an investigatory device arising out of the needs of the trustee should be kept in mind, and where a proposed examination goes beyond that purpose it should be carefully scrutinized. Here, both motions, although couched in the rule's language of matters affecting the administration of the estate and investigating the conduct of the debtor, exceed those boundaries. Remember, these are chapter 7 cases and it is the trustee's the duty to investigate the debtor's affairs and the rights of the bankruptcy estate. To the extent the movants seek to discover avoidable transfers, they are intruding upon the trustee's duties



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, November 29, 2018

Hearing Room 301

2:00 PM

CONT...

**Momentum Development LLC**

**Chapter 7**

and taking those duties upon themselves. While the court may understand their curiosity, there is nothing the movants could do with that information once they got it. They could not act upon it, or seek to recover any such transfers; the trustee has the exclusive right to do so. *Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) (If a third party tries to prosecute a cause of action belonging to the trustee, the action should be dismissed.). So, in that sense, their examination can serve no real purpose.

*Id.*, at 822. The court concluded that, if the creditors "genuinely want to help the trustee, should the trustee desire that assistance, they must do so directly, acting for, at the behest of, and in the name of the trustee, and not indirectly, in a manner that treats the trustee as simply an incidental beneficiary of an endeavor actually undertaken for someone else." *Id.*; see also *In re E. W. Resort Dev. V, L.P., L.L.L.P.*, 2014 WL 4537500, at \*8 (Bankr. D. Del. Sept. 12, 2014) (denying a creditor's motion for Rule 2004 examination because recovery beyond the moving creditor's allowed claim was impossible and an examination by the moving creditor "would be futile").

Here, as in *J & R Trucking*, DCA seeks to examine Debtor to investigate any transfers made by Debtor to third parties. For the reasons set forth by the *J & R Trucking* court, the chapter 7 trustee is tasked with the investigation, avoidance and recovery of transfers. As such, without the chapter 7 trustee explicitly requesting DCA's assistance, DCA does not have a purpose for the 2004 examination; even if DCA uncovers transfers from Debtor to a third party, DCA cannot use that information to avoid the transfers or recover the transfers for the benefit of the estate.

After Debtor filed an objection to the Motion, the burden shifted to DCA to show "good cause" for the examination. *Subpoena Duces Tecum*, 461 B.R. at 829. In both the Motion and the Reply, DCA's sole articulated purpose for conducting a Rule 2004 examination is to investigate Debtor's relationship with a different entity and any transfers made to that entity. As noted by *Subpoena Duces Tecum*, "[g]enerally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* Here, DCA has not stated that it needs to examine Debtor to establish its claim against the estate, and DCA has not articulated any undue hardship or injustice it may suffer as a result of denial of the Motion. Instead, DCA

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Momentum Development LLC**

**Chapter 7**

seeks an examination to investigate alleged transfers from Debtor to another entity, which is a duty assigned by statute to the chapter 7 trustee. Under *J & R Trucking*, a creditor's attempt to assume the chapter 7 trustee's duties through a Rule 2004 examination is inappropriate without the chapter 7 trustee's explicit consent. Consequently, the Court will deny the Motion.

**III. CONCLUSION**

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Momentum Development LLC

Represented By  
Michael H Raichelson

**Trustee(s):**

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12156 Integrated Dynamic Solutions, Inc.**

**Chapter 11**

**#10.00 Debtor's emergency motion for orders authorizing interim and final use of cash collateral**

fr. 9/11/18; 9/20/18; 10/18/18

Docket 18

**Tentative Ruling:**

Keeping in mind that the "ASAI Receivable" is a finite sum of money, it appears that the debtor has not demonstrated the existence of adequate protection for its proposed, ongoing use of the monthly payments made by "ASAI."

Concerning the employment of special litigation counsel, at this point in the litigation with ASAI (several years following the filing of the Complaint against ASAI, and with a trial set in May 2019), the Court is not inclined to approve employment that requires payment of a \$6,000 monthly flat fee. As noted in a Declaration of Nasrollah Gashtili, signed on October 31, 2018, proposed special litigation counsel has "prepared for trial already" and "is thoroughly familiar with the facts and law relevant to the case."

On the other hand, providing a higher contingency fee to proposed special litigation counsel, in lieu of providing a monthly flat fee postpetition, may be appropriate.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Integrated Dynamic Solutions, Inc.

Represented By  
David A Tilem

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#11.00** Confirmation hearing re chapter 11 plan of reorganization

fr. 11/15/18

Docket 50

**Tentative Ruling:**

The Court will confirm the debtor's chapter 11 plan dated July 31, 2018 [doc. 50], as amended by a stipulation filed on October 1, 2018 [doc. 65] and the Declaration of Eduardo Jacinto [doc. 77] (*i.e.* general unsecured creditors in class 6(b) will be paid 100% of their claims in full on the Effective Date).

No later than **February 28, 2019**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the secured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. A postconfirmation status conference will be held on **March 14, 2019 at 1:00 p.m.**

The debtor must submit a plan confirmation order within seven (7) days.

**Ruling from 11/15/2018**

On September 24, 2018, the Court entered an order approving the use of the debtor's disclosure statement to solicit acceptances and rejections of the debtor's chapter 11 plan [doc. 63]. On October 1, 2018, the debtor and Wells Fargo Bank, N.A. ("Wells Fargo") entered into a stipulation regarding the treatment of Wells Fargo's claim under the debtor's chapter 11 plan (the "Stipulation") [doc. 65]. On October 3, 2018, the Court entered an order approving the Stipulation [doc. 68].

The Stipulation increases the debtor's monthly plan payment to Wells Fargo from \$2,775.00 to \$2,975.52. It also requires the debtor to make a lump sum payment of \$12,000.00 to Wells Fargo on November 30, 2018.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Eduardo Ablan Jacinto**

**Chapter 11**

In light of the Stipulation, the Court will continue this hearing to **November 29, 2018 at 2:00 p.m.** In order for the Court to assess whether the debtor's chapter 11 plan complies with 11 U.S.C. § 1129(a)(11), **no later than November 26, 2018**, the debtor must file an updated income and expense projection for six-months following the confirmation of the plan of reorganization, which reflects the debtor's actual income and expenses, as set forth in the debtor's last six monthly operating reports.

The updated income and expense projection must include the increased monthly payments to Wells Fargo, as well as any other plan payments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, November 29, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10642 Eduardo Ablan Jacinto**

**Chapter 11**

**#12.00** Status conference re: chapter 11 case  
fr. 5/3/18; 8/16/18; 9/20/18; 11/15/18

Docket 1

**Tentative Ruling:**

See calendar no. 11.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Ablan Jacinto

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:14-14009 Michele Amy Schneider

Chapter 13

#1.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB  
VS  
DEBTOR

fr. 11/7/18

Docket 55

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

**Party Information**

**Debtor(s):**

Michele Amy Schneider

Represented By  
Joshua L Sternberg

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-11580 Kaliston Jose Nader

Chapter 11

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

fr. 11/14/18

**Stip resolving motion filed 11/14/18.**

Docket 47

\*\*\* VACATED \*\*\* REASON: Order approving stip entered 11/16/18 [Dkt. 56]

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kaliston Jose Nader

Represented By  
Onyinye N Anyama



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-12566 Wayne Holloway

Chapter 7

#3.00 Amended motion for relief from stay [UD]

PUNAM GOHEL  
VS  
DEBTOR

Docket 15

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wayne Holloway

Pro Se

**Movant(s):**

Punam Gohel

Represented By  
Helen G Long

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-12375 Stefanie Vianey Barajas Espinoza

Chapter 7

#4.00 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION  
VS  
DEBTOR

Docket 7

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Stefanie Vianey Barajas Espinoza

Represented By  
Sydell B Connor

**Movant(s):**

NISSAN MOTOR ACCEPTANCE

Represented By  
Michael D Vanlochem

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:15-14067 Brian Igbini

Chapter 13

#5.00 Motion for relief from stay [RP]

U.S. BANK, NA  
VS  
DEBTOR

Docket 60

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

**Party Information**

**Debtor(s):**

Brian Igbini

Represented By  
Anthony Obehi Egbase  
Crystle Jane Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Movant(s):**

U.S. Bank, N.A., successor trustee to

Represented By  
Daniel K Fujimoto  
Caren J Castle

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-11849 Leticia E. Donis Duran

Chapter 13

#6.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING LLC  
VS  
DEBTOR

Docket 19

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Leticia E. Donis Duran

Represented By  
Donald E Iwuchuku

**Movant(s):**

Lakeview Loan Servicing, LLC

Represented By  
Darlene C Vigil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#7.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 25

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert Winn Jr

Represented By  
Julie J Villalobos

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

9:30 AM

1:18-10369 Jaime Gutierrez

Chapter 13

#8.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 45

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 9:30 AM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 9:30 a.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhvani

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

1:30 PM

**1:16-10045 Duane Daniel Martin**

**Chapter 7**

Adv#: 1:18-01106 David K. Gottlieb in his capacity as Chapter 7 Tru v. Roxe, LLC, a

- #9.00** Status conference re: complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
  2. Recover property of the estate nature of suit

fr. 11/7/18(stip)

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 1:30 pm**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 1:30 p.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Defendant(s):**

Doe 1 through DOE 10, inclusive

Pro Se

Michael Martin an individual

Pro Se

Derek Folk, an individual

Pro Se

Roxe, LLC, a California limited

Pro Se

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Duane Daniel Martin**

**Chapter 7**

Joseph R Dunn

**Plaintiff(s):**

David K. Gottlieb in his capacity as

Represented By  
Beth Ann R Young

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

1:30 PM

1:17-12434 Robin DiMaggio

Chapter 7

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#10.00** Status conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18; 8/8/18; 8/22/18; 10/17/18

Docket 1

\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 1:30 PM

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 1:30 p.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah et al

**#11.00** Status conference re: first amended Complaint for:

- 1) Fraud
- 2) Faud based on forgery;
- 3) Civil conspiracy;
- 4) Misconduct of neglect of notary public;
- 5) Quit title;
- 6) Cancellation of instrument;
- 7) Slander of title;
- 8) Declaratory relief;
- 9) Injunctive relief

fr. 10/17/18

CROSS COMPLAINT

Jeff Daragah, an individual  
Cross-Complainant

v

Ali P. Dargah, an individual  
Cross-Defendant

Docket 10

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 1:30 PM**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 1:30 p.m.

Appearances on December 5, 2018 are excused.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ali P Dargah**

**Chapter 13**

**Debtor(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik

**Defendant(s):**

Jeff Javad Dargah	Pro Se
Jeff Javad Dargah, an individual	Pro Se
Gerakdune Granda an individual	Pro Se
The Bank of New York Mellon fka	Pro Se
Shahla Dowlati, an individual	Pro Se
All Persons or Entities Unknown	Pro Se
Does 1 to 10, Inclusive	Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik  
David M Kritzer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

1:30 PM

**1:18-10468 Patrick Abrahamian**

**Chapter 7**

Adv#: 1:18-01063 Cotton v. Abrahamian

**#12.00** Status conference re complaint to determine the non-dischargeability of debts under 11U.S.C. §523(a)(6)

fr. 7/18/18; 10/3/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 1:30 PM**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 1:30 p.m.

Appearances on December 5, 2018 are excused.

**Party Information**

**Debtor(s):**

Patrick Abrahamian

Represented By  
Leo Fasen

**Defendant(s):**

Patrick Abrahamian

Pro Se

**Plaintiff(s):**

Thomas Christian Cotton

Represented By  
Andrew R Delaflor

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11243 Jeff Davani**

**Chapter 7**

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

**#13.00** Status conference re: first amended complaint objecting to discharge of debt under 11 U.S.C. sec 523(a)(2), (a)(4), and (a)(6)

Docket 8

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 1:30 PM**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 1:30 p.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeff Davani Pro Se

**Defendant(s):**

Jeff Davani an individual, doing Represented By  
Michael H Raichelson

**Joint Debtor(s):**

Nadia Davani Pro Se

**Plaintiff(s):**

Yvonne Johnson Represented By  
Stephen M Sanders

**Trustee(s):**

David Keith Gottlieb (TR) Represented By  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01103 Hancock v. Anderson

**#14.00** Status conference re: complaint to object to discharge of debt [11 USC sections 523(a)(2)(A), 523(a)(4), 523(a)(6) and 523(a)(19)(A)(ii) ]

fr. 11/7/18

**Stipulation for judgment filed 11/28/18**

Docket 1

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered 12/3/18.

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Defendant(s):**

Christopher Anderson

Pro Se

**Plaintiff(s):**

Jerry Hancock

Represented By  
James A Judge

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 5, 2018

Hearing Room 301

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#15.00** Motion for sanctions against plaintiff Steven Mark Rosenberg pursuant to FRCP Rule 11 and FRBP Rule 9011; in the form of monetary sanctions in the striking of the notice of motion and motion to alter or amend judgment

Docket 61

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 2:30 PM**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 2:30 p.m.

Appearances on December 5, 2018 are excused.

**Party Information**

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Tomas A Ortiz

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 5, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#16.00** Plaintiff's motion for default judgment

Docket 60

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 12/12/18 at 2:30 PM**

**Tentative Ruling:**

Because of the National Day of Mourning in honor of the late President George H.W. Bush, the Court will be closed on December 5, 2018, and this hearing is continued to December 12, 2018 at 2:30 p.m.

Appearances on December 5, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

10:30 AM

**1:17-11255 Ikechukwu Mgbeke**

**Chapter 11**

**#1.00** Application for final fees and/or expenses for AOE Law & Associates,  
Period: 12/19/2017 to 11/5/2018

Docket 146

**Tentative Ruling:**

**No later than December 13, 2018**, pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), A.O.E. Law & Associates, APC ("Applicant") must file a client declaration regarding its fee application, or a statement regarding steps taken to obtain such declaration if none is forthcoming. Provided that such declaration is timely filed, the Court will approve fees and expenses as follows:

Applicant, general counsel to debtor in possession – approve fees of \$11,000.00 and reimbursement of expenses of \$83.21, pursuant to 11 U.S.C. § 330, on a final basis. All fees and reimbursement of expenses approved on an interim basis are approved on a final basis. Applicant may collect 100% of approved fees and 100% of approved reimbursement of expenses.

**Party Information**

**Debtor(s):**

Ikechukwu Mgbeke

Represented By  
Anthony Obehi Egbase  
Clarissa D Cu  
Crystle Jane Lindsey  
W. Sloan Youkstetter

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#2.00** Post-Confirmation status conference re chapter 11 case

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017;  
1/11/18; 1/25/18; 3/15/18; 7/19/18; 8/23/18

Docket 1

**Tentative Ruling:**

The Court will continue this chapter 11 case status conference to **December 20, 2018 at 1:00 p.m.**, to be held in connection with the hearing on the debtor and debtor in possession's motion for a final decree and order closing the case [doc. 271].

Appearances on December 6, 2018 are excused.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12739 Mehri Akhlaghpour**

**Chapter 11**

**#3.00** Status conference re chapter 11 case

fr. 12/7/17; 12/21/17; 5/17/18; 6/7/18; 7/5/18; 7/19/18;  
9/6/18(stip); 9/20/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 12/4/18 [doc. 372].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mehri Akhlaghpour

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, December 6, 2018

Hearing Room 301

1:00 PM

1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck

Chapter 11

#4.00 Second amended disclosure statement hearing

fr. 7/19/18

Docket 81

**Tentative Ruling:**

Contrary to the Court's instructions from the prior hearing on the debtors' original disclosure statement, the debtors did not include *monthly* projections in their disclosure statement. Moreover, the amounts listed in the debtors' projected income and expenses do not match the amounts the debtors propose to pay in their amended chapter 11 plan. For instance, in their amended chapter 11 plan, the debtors indicate their monthly mortgage payment is \$4,531.72. However, in the projections, the debtors list their monthly mortgage and dues as \$4,088.29. In addition, in their projections, the debtors list monthly plan payments of \$2,543, but it is unclear how the debtors calculated this number.

Further, the debtors indicate in the attachments to the disclosure statement that the Emery Lane property is worth \$950,000 (an increase in value from the value shown in their Schedule D). However, on page 5 of the disclosure statement, they state that the Emery Lane property is worth \$890,000.

What was the list price of the Emery Lane property, during which time the debtors were unable to sell that property?

The debtors must provide detailed information about their efforts to sell that property, e.g., the list price(s), the period of time related to each list price, the number of open houses and showings of the property that have occurred, and the details of any offers to purchase received, including the date of the offer and the amount.

The Court questions why, if the value of the Emery Lane property (the debtors' residence) has increased since the petition date, the value of the Whitley Avenue property (the debtors' rental condominium, in Avalon) has not increased since that date.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Roger Ronald Steinbeck and Stannis Veronica Steinbeck Chapter 11**

**Party Information**

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

**Chapter 11**

**#5.00** Status conference re chapter 11 case

fr. 12/21/17; 1/11/18; 5/24/18; 6/7/18; 7/19/18

Docket 1

**Tentative Ruling:**

The Court will set a deadline of **April 1, 2019** for the debtors to confirm a chapter 11 plan.

Although the debtors' case has been pending since November 7, 2017, the debtors have not yet obtained Court approval of a disclosure statement. The debtors acknowledge that, as a result of substantial equity in their two real properties, they must pay all creditors in full. However, they also note that they have not sold their residence, which was listed for sale months ago, and that their second amended chapter 11 plan faces feasibility issues. To avoid further unnecessary delay in the payment of creditors, if the debtors do not confirm a chapter 11 plan by April 1, 2019, the Court may appoint a chapter 11 trustee or convert this case to a case under chapter 7.

The Court will prepare an order setting that deadline for the debtors to confirm a chapter 11 plan.

**Party Information**

**Debtor(s):**

Roger Ronald Steinbeck

Represented By  
Michael R Totaro

**Joint Debtor(s):**

Stannis Veronica Steinbeck

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, December 6, 2018

Hearing Room 301

1:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#6.00 Status conference re: chapter 11 case

from: 8/2/18

Docket 1

**Tentative Ruling:**

Having reviewed the *Second Case Status Conference Report* and attached declaration [doc. 100] filed by the debtor, the Court will continue this chapter 11 status conference to **January 24, 2019 at 1 p.m.** to be held after completion of the global mediation. The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, **no later than 14 days** before the continued status conference. The status report **must be supported by evidence in the form of declarations and supporting documents.**

Appearances on December 6, 2018, are excused.

**Party Information**

**Debtor(s):**

Robert Edward Zuckerman

Represented By  
Sandford L. Frey  
Stuart I Koenig



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

1:00 PM

**1:18-12494**    **Elas, LLC dba Calnopoly, LLC**

**Chapter 11**

**#7.00**    Status conference re chapter 11 case

Docket    1

**Tentative Ruling:**

The debtor must submit evidence of the identities of: (1) the current holder of the claim secured by the real property located at 4715 Presidio Drive, Los Angeles, CA 90043 and (2) any servicing agent for that secured debt. When can the debtor do so?

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **February 15, 2019.**

Deadline to mail notice of Bar Date: **December 14, 2018.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **May 31, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 20, 2019.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT...      Elas, LLC dba Calnopoly, LLC**

**Chapter 11**

**Party Information**

**Debtor(s):**

Elas, LLC dba Calnopoly, LLC

Represented By  
Anthony Obehi Egbase

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:11-16147 Svetlana Osnas**

**Chapter 7**

**#8.00** Motion to reopen chapter 7 case

Docket 20

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Svetlana Osnas

Represented By  
David S Hagen

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:16-10440 Salvador Nevarez**

**Chapter 7**

**#9.00** Motion objection to claim number 1 by claimant  
Bureaus Investment Group Portfolio No 15, LLC

Docket 74

**Tentative Ruling:**

Sustain.

**I. BACKGROUND**

On February 16, 2016, Salvador Nevarez ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee"). In Debtor's schedule E/F, Debtor listed several debts owed to Capital One: (A) a \$3,418 owed as to the account ending with the digits 9593; (B) a \$2,213 debt owed as to the account ending with the digits 5838; and (C) a \$3,582 debt owed as to the account ending with the digits 8023. Debtor did not schedule a debt owed to Bureaus Investment Group Portfolio No 15 LLC ("Bureaus").

On May 2, 2016, Bureaus filed proof of claim no. 1-1 in the amount of \$3,920.26. In the proof of claim, Bureaus indicated that it acquired the claim from Capital One. Bureaus also indicated that the last four digits of the account it acquired are 3719. To the proof of claim, Bureaus attached a Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(A) statement, again indicating that it acquired the debt from Capital One. Bureaus did not otherwise provide documentation evidencing a transfer of a debt owed by Debtor from Capital One to Bureaus.

On October 26, 2018, the Trustee filed an objection to Bureaus' claim (the "Objection") [doc. 74]. In the Objection, the Trustee asserts that Bureaus does not have standing to seek payment from the estate because there is no evidence that Capital One assigned one of Debtor's accounts to Bureaus. Bureaus has not timely filed a response to the Objection.

**II. ANALYSIS**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, December 6, 2018

Hearing Room 301

---

2:00 PM

CONT...

Salvador Nevarez

Chapter 7

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the *prima facie* validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, the Trustee asserts that there is no evidence that Bureaus has standing to obtain payment from the estate. Because the Trustee is objecting on the basis of standing, the Trustee is correct that cases like *Campbell, supra*, do not apply to this case. In *Campbell*, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") held that:

We emphasize, as we did in *Heath*, that a creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack *prima facie* validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor. Moreover, a creditor's lack of adequate response to a debtor's formal or informal inquiries "in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Salvador Nevarez**

**Chapter 7**

the claim." *Heath*, 331 B.R. at 437 (citations omitted).

*Campbell*, 336 B.R. at 436 (citing *In re Heath*, 331 B.R. 424 (B.A.P. 9th Cir. 2005)). In other words, although a lack of documentation alone is insufficient to disallow a claim, if the objecting party raises a substantive issue under 11 U.S.C. § 502(b), the claimant's failure to respond or provide sufficient evidence may lead to disallowance of the claim. Pursuant to 11 U.S.C. § 502(b)(1), the Court may disallow claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The Trustee asserts that the claim is unenforceable against the estate because Bureaus has not demonstrated that Capital One assigned one of Debtor's accounts to Bureaus. In addition, Debtor did not schedule Bureaus as a creditor, and because the account number included in Bureaus' proof of claim is different from the account numbers listed in Debtor's schedules, it is unclear from Debtor's schedules if Bureaus inherited one of the accounts listed by Debtor. Because Bureaus did not respond to the Objection with a transfer or assignment agreement between Capital One and Bureaus, there is no evidence that Bureaus has a claim against the estate, and the Court should disallow the claim pursuant to § 502(b)(1).

### **III. CONCLUSION**

The Court will sustain the Objection.

The Trustee must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Salvador Nevarez

Represented By

Richard McGuire

Edmond Richard McGuire

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

---

2:00 PM

**CONT... Salvador Nevarez**

Phillip Myer

**Chapter 7**

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Larry D Simons  
Frank X Ruggier

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#10.00** Motion for an order to extend time to file plan of reorganization and disclosure statement

Docket 185

**Tentative Ruling:**

Grant. The Court will extend the deadline for the debtor to file a chapter 11 plan and related disclosure statement to November 15, 2018.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#10.10** Motion for FRBP 2004 examination of debtor Deborah Adri

Docket 201

**Tentative Ruling:**

For the reasons discussed below, the Court will grant the motion in part as set forth herein.

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. In her schedule E/F, Debtor listed a disputed nonpriority unsecured claim in favor of Moshe Adri ("Creditor") in the amount of \$1,353,835.48. Debtor indicated that the basis of Creditor's claim was an arbitration award and attorneys' fees.

On November 19, 2018, Creditor filed a *Motion for FRBP Rule 2004 Examination of Debtor Deborah Adri* (the "Motion") [doc. 201]. On November 20, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 204]. On November 29, 2018, Creditor filed a reply to the Opposition (the "Reply") [doc. 207].

Federal Rule of Bankruptcy Procedure ("Rule") 2004 states—

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the 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. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT...**

**Deborah Lois Adri**

**Chapter 11**

continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

"Rule 2004 is the basic discovery device in bankruptcy cases. It allows broad examination relating to 'the 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 discharge.'" *In re Mastro*, 585 B.R. 587, 596-97 (B.A.P. 9th Cir. 2018) (citing *In re Subpoena Duces Tecum*, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011)). "As the Rule's text makes clear, the scope of a Rule 2004 examination is 'unfettered and broad'; the rule essentially permits a 'fishing expedition.'" *Id.*, at 597 (citing *Subpoena Duces Tecum*, 461 B.R. at 829). However, "Rule 2004 is not without its limits." *Id.*

"When a party seeks to conduct a 2004 examination, and the party to be examined objects, the former must show that it has 'good cause' to conduct the examination." *Subpoena Duces Tecum*, 461 B.R. at 829. "Generally, good cause is shown if the Rule 2004 examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." *Id.* (internal quotation omitted). "Once the examiner establishes the existence of 'good cause,' the burden shifts back to the objecting party to show that examination would be oppressive or burdensome." *Id.* "The opportunity for such an examination is available to 'any party in interest,' Fed. R. Bankr.P. Rule 2004(a), but whether or not the court allows the examination is a matter committed to its discretion and requires a sufficient cause." *In re J & R Trucking, Inc.*, 431 B.R. 818, 821 (Bankr. N.D. Ind. 2010).

"Courts have imposed limits on the use of Rule 2004 examinations where the purpose of the examination is to abuse or harass, or under the well recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004." *Id.*; *see also 2435 Plainfield Ave., Inc. v. Township of Scotch Plains*, 223 B.R. 440, 455-56 (Bankr. D. N.J. 1998); *but see In re Buick*, 174 B.R. 299, 306 (Bankr. D.Col. 1994) (recognizing

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

that this limitation does not apply to parties not affected by, and issues not raised in, pending adversary proceedings).

Here, Creditor, a party in interest, is seeking the Rule 2004 examination in order to establish sufficient facts to support a denial of discharge under §§ 1141(d)(2), (d)(3) and § 727(a). As such, Creditor has shown good cause for the Rule 2004 examination. Further, the purpose of the Rule 2004 examination does not appear to be to abuse or harass Debtor, and there is no pending adversary proceeding or contested matter between Creditor and Debtor.

Thus, the burden shifts back to Debtor to show that the examination would be oppressive or burdensome. Creditor attached emails to the Motion showing his attempt to meet and confer with Debtor before filing the Motion [doc. 201, Exhs. 11-17]. In the November 16, 2018, email from Mr. Yaspan to Mr. Forsley [doc. 201, Exh. 15], Debtor states that she is willing to produce the documents that she has in her possession. However, Debtor states that she is not willing re-produce documents that were produced to Creditor during the recent arbitration. The Court finds that it would be burdensome for Debtor to re-produce documents that Creditor already has in his possession. Debtor did not submit evidence to the Court regarding which documents were already produced to Creditor.

In the Motion, Creditor also requests that the Court approve subpoenas to nine different third parties to produce documents [doc. 201, Exh. 18]. Pursuant to Local Bankruptcy Rule ("LBR") 2004-1—

(a) Conference Required. Prior to filing a motion for examination or for production of documents under FRBP 2004, the moving party must attempt to confer (in person or telephonically) *with the entity* to be examined, or its counsel, to arrange for a mutually agreeable date, time, place, and scope of an examination or production.

(b) Motion. A motion for examination under FRBP 2004 must be filed stating the name, place of residence, and the place of employment *of the entity to be examined*, if known. The motion must include a declaration of counsel stating whether the required conference was held and the efforts made to obtain an agreeable date, time, place, and scope of an examination or production. The motion must also explain why the examination cannot proceed under FRBP

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Thursday, December 6, 2018

Hearing Room 301

2:00 PM

CONT...

**Deborah Lois Adri**  
7030 or 9014.

**Chapter 11**

(c) Notice and Service. The motion must be served on the debtor, debtor's attorney (if any), the trustee (if any), the United States trustee, *and the entity to be examined*. Not less than 21 days notice of the examination must be provided, calculated from the date of service of the motion, unless otherwise ordered by the court.

...

(e) Subpoena. If the court approves a Rule 2004 examination *of an entity other than the debtor*, the attendance of the entity for examination and for the production of documents must be compelled by subpoena issued, and served pursuant to FRBP 9016 and F.R.Civ.P. 45.

LBR 2004-1 (emphasis added). Reading LBR 2004-1 as a whole, it requires the movant to file and serve a *separate* Rule 2004 motion on each entity which must produce documents. Creditor has not complied with LBR 2004-1. If Creditor is requesting that each of the nine entities listed in the Motion produce documents, Creditor must file and serve a *separate* Rule 2004 motion on *each* entity. Further, Creditor has not complied with LBR 2004-1(a). Creditor did not attempt to confer with each of the nine entities to arrange for a mutually agreeable date, time, place, and scope of an examination or production.

The Court will grant the Motion in regard to a Rule 2004 examination of Debtor. However, Debtor is not required to re-produce documents that were produced to Creditor during the recent arbitration. Regarding Creditor's document production request from Debtor, **no later than December 20, 2018**, Debtor must file a declaration identifying the responsive documents that were previously produced to Creditor during the arbitration. The parties should be prepared to discuss a possible date, time and place for the Rule 2004 examination.

**Party Information**

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10417 Deborah Lois Adri**

**Chapter 11**

**#11.00** Status conference re: chapter 11 case

from: 3/29/18; 4/12/18; 11/15/18

Docket 1

**Tentative Ruling:**

On November 15, 2018, the debtor filed a chapter 11 plan (the "Plan") and proposed related disclosure statement [docs. 196, 197]. The Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **February 21, 2019 at 1:00 p.m.**

In accordance with Local Bankruptcy Rule 3017-1, **no later than January 10, 2019**, the debtor must provide notice of the hearing, the ability of creditors to receive, on request, copies of the plan and related proposed disclosure statement, and the deadline to file any objections to the proposed disclosure statement.

In reviewing the debtor's monthly operating reports, the Court has noticed that the debtor is not properly completing Section II - regarding the status of payments to secured creditors, lessors and other parties to executory contracts, Section III - regarding tax liabilities, and Section VI - regarding United States Trustee quarterly fees. Further, in her October 2018 monthly operating report, the debtor did not properly complete Section XI.

In the status report filed on November 1, 2018 [doc. 187], the debtor states that "[h]er chief business activity at this time consists of the purchase of motor vehicles primarily from wholesale auction houses and then placing them for resale at a used-car dealership known as 'Ride on Autos'" [doc. 187, p. 1]. The debtor purchases "the vehicles and Ride-on-Autos sells the vehicles on consignment." Declaration of Deborah Adri, doc. 204, ¶ 4. "Title to the vehicles are in [the debtor's] name until sold, and not in Ride-on-Auto's name." *Id.*

To the extent that any vehicles have been sold, in her monthly operating reports, the debtor is not accurately reporting her tax liabilities.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**CONT... Deborah Lois Adri**

**Chapter 11**

Based on the Court's preliminary assessment of the Plan, it appears that the debtor's treatment of the priority claim of the Internal Revenue Service does not comply with 11 U.S.C. § 1129(a)(9)(C)(iii) and the treatment of the secured claim of the State of California Franchise Tax Board does not comply with 11 U.S.C. § 1129(a)(9)(D). Further, the Plan does not address the treatment of the Class 4 interest (of the debtor).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Deborah Lois Adri

Represented By  
Robert M Yaspan

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#12.00** Motion for Authority to Use Cash Collateral

fr. 8/28/18; 9/27/18

Docket 7

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
M. Jonathan Hayes  
Roksana D. Moradi-Brovia

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#13.00** Status conference re chapter 11 case

fr. 10/11/18

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **1:00 p.m. on February 21, 2019**, to determine if the debtor has timely filed a proposed chapter 11 plan and related disclosure statement by the deadline of January 31, 2019.

**Party Information**

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
M. Jonathan Hayes  
Roksana D. Moradi-Brovia



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 6, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12494**    **Elas, LLC dba Calnopoly, LLC**

**Chapter 11**

**#14.00**    Debtor's motion for order authorizing use of cash collateral on an interim basis pending a final hearing and provide adequate protection to secured Ocwen Loan Servicing, LLC

Docket      11

**Tentative Ruling:**

The Court will continue this hearing to **2:00 p.m. on December 20, 2019**. No later than **December 13, 2019**, the debtor must file and serve a supplemental declaration attaching a budget based on the rental income the subject property currently generates, as the debtor has represented, *i.e.* \$1,930 per month.

The debtor must identify which expenses the debtor intends to pay using its **current** rental income (which is significantly less than the income set forth in the proposed budget). The debtor also must submit copies of any current lease agreements regarding the subject property.

The debtor must serve the supplemental declaration (and any future filings) on Ocwen Loan Servicing, LLC ("Ocwen") at the address for notice provided in Ocwen's proof of claim.

**Party Information**

**Debtor(s):**

Elas, LLC dba Calnopoly, LLC

Represented By  
Anthony Obehi Egbase

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

---

9:30 AM

**1:00-00000**

**Chapter**

**#0.00** PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR  
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:  
**JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR**  
(WWW.CACB.USCOURTS.GOV)

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#26.00 Chapter 13 confirmation hearing

Docket 82

**Tentative Ruling:**

For the reasons discussed below, the Court will sustain the creditor's objection to confirmation in part, and overrule that objection to confirmation in part.

**I. BACKGROUND**

On December 29, 2017, Mark Efrem Rosenberg (the "Debtor") filed a voluntary chapter 13 petition. On January 11, 2018, the Debtor filed a chapter 13 plan (the "Plan") [doc. 11]. On the same day, the Debtor filed his schedules and statement of financial affairs [doc. 10].

***A. The Debtor's Current Monthly Income***

On his Form 122C-1, Debtor indicated that his current monthly income is below the median family income for his state and size of household [doc. 10]. Debtor reported that his income was \$101,300.28, while the median family income for his state and size of household is \$106,244.00.

The Debtor has a 35% interest in Arcade & Party Rental by GEMS ("GEMS"), which is organized as a chapter S corporation [doc. 64, Declaration of Mark Efrem Rosenberg, ¶ 11a]. Regarding his compensation from GEMS, the Debtor states in relevant part,

12a. I am paid fixed [*sic*] salary of \$2,500.00 per month and a fixed draw of \$3,500.00 per month. ***At the end of the year***, we determine whether or not there is net income that is available to distribute to the owners, and if so, how much to distribute.

12b. ***Moreover, if we distribute all of the net income, we will not have any reserve cash with which to operate. We always have to allocate a portion of GEMS' new income to reinvestment in GEMS for operational needs and***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**      **Mark Efrem Rosenberg**  
*unforeseen emergencies.*

**Chapter 13**

Doc. 64, Declaration of Mark Efrem Rosenberg, ¶¶ 12a-12b. (emphasis in original).

The Debtor reported \$108,098.00 in income (\$107,848.00 adjusted gross income) on his 2017 federal tax return, which included his and his non-filing spouse's income [doc. 79]. In 2017 the Debtor reported income from GEMS of \$81,628.00; that income included his salary and his owner's draw [doc. 93, Declaration of Mark Efrem Rosenberg, ¶ 3]. According to the Debtor, although he reported \$81,628.00, his gross take home income never exceeded \$72,000.00 *i.e.* \$6,000.00 per month consisting of his salary and owner's draw; the difference of \$9,628.00 represents the amount of his unrealized share of GEMS 2017 profits that the Debtor left in the business for operational purposes. *Id.*, at ¶¶ 5-6. The Debtor represents that at no time in 2015, 2016 or 2017, did he ever receive any additional ownership draw over and above his stated salary of \$6,000.00 per month, and he does not anticipate receiving any additional ownership draw above his salary in 2018. *Id.*, at ¶¶ 7-8.

***B. The Debtor's Schedules***

On September 13, 2018, the Debtor filed an amended Schedule J [doc. 76]. October 25, 2018, the Debtor filed an amended Schedule I ("Amended Schedule I") and a second amended Schedule J ("Second Amended Schedule J") [doc. 81]. In his Amended Schedule I, the Debtor states that his non-filing spouse is a teacher, whose income is \$2,232.91 per month. The Debtor also represents that his in-laws will contribute \$250.00 per month in income.

In his Second Amended Schedule J, the Debtor states that he has four children, ages 5, 11, 14 and 16. The Debtor represents that he spends an aggregate of \$1,414.58 per month for tuition for three children at Jewish religious school. The Debtor further indicates that he spends \$491.66 per month to send his 5 year-old child to Yeshiva Katana, a religious pre-school, day care provider [doc. 79, p. 8].

In his Second Amended Schedule J, the Debtor scheduled an expense for clothing, laundry and dry cleaning of \$75.00 per month for six people. The Debtor stated his family's food expense at \$1,250.00 per month. The chapter 13 trustee has a standard no-look food allowance of \$250.00 per person per month [*see* doc. 79, Declaration of Mark Efrem Rosenberg, ¶ 12c.]. For a family of six, that would equal \$1,500.00 per

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

month. The Debtor scheduled medical and dental expenses of \$0.00 and a health insurance expense of \$0.00 per month for six people. The Debtor claimed an expense for entertainment of \$75.00 per month, an emergency allocation of \$100.00 per month and \$0.00 per month for home repair allocation.

*i. The Debtor's Charitable Contributions and Religious Donations*

The Debtor scheduled \$621.00 per month in charitable contributions and religious donations. The Debtor's charitable expenses consist of two membership fees totaling \$6,800.00, and a banquet fee, the charitable component of which is \$650.00, for a total charitable expense of \$7,450.00 for 2018-2019. [doc. 79]. The Debtor's 16 year-old child attends Emek Hebrew Academy, which charges a \$4,800.00 synagogue membership fee for the 2018-2019 school year [doc. 79, Exh. 2]. The Debtor's 14 year-old attends Ner Aryeh high school, which charges a \$2,000.00 synagogue membership fee for the 2018-2019 school year. *Id.* The Debtor's 11 year-old attends Bais Yaakov School for Girls, which does not charge a membership fee but does charge a banquet fee of \$750.00 for the 2018-2019 school year, as a fund raiser for the school. *Id.* The cost for food at the banquet is \$50.00 per plate. The Debtor and his spouse both attend the banquet. The Debtor claimed only the non-meal portion of the banquet fee as a charitable expense.

*ii. The Debtor's Religious School Tuition Expense*

In his Second Amended Schedule J, the Debtor states that he spends \$1,414.58 per month in tuition for his 16 year-old, his 14 year-old and his 11 year-old children to attend Jewish religious school. The Debtor filed a declaration of Rabbi Eliezer Eidlitz regarding the importance of Jewish day school education for preserving Judaism [doc. 77].

**C. The Debtor's Chapter 13 Plan**

Between February 2018 and July 2018, the chapter 13 trustee (the "Trustee") filed several objections to the Plan [docs. 25, 29, 32, 43 and 52]. Trinity Financial Services, LLC ("Creditor") also filed several objections to the Plan [docs. 26 and 39].

On February 28, 2018, Creditor filed a proof of claim for a secured debt in the amount

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

of \$129,194.10 based on a deed of trust against the Debtor's residence [Claim 2-1]. On January 25, 2018, the Debtor filed a motion to avoid Creditor's lien [doc. 18]. On March 15, 2018, the Court entered an order granting the Debtor's motion to avoid Creditor's lien [doc. 33]. The Court found that the value of the residence was \$740,000.00. The first lien on the residence was \$817,358.63. Accordingly, the entire amount of Creditor's \$129,194.10 claim was deemed unsecured.

On August 1, 2018, the Debtor filed an amended chapter 13 plan (the "First Amended Plan") [doc. 62]. The First Amended Plan proposed to pay nonpriority unsecured creditors 17.9% of their total claims, and proposed a plan length of 60 months.

On October 25, 2018, the Debtor filed a second amended chapter 13 plan (the "Second Amended Plan") [doc. 82]. The Second Amended Plan proposes to pay \$1,049.31 in arrears to the holder of the first deed of trust on the Debtor's residence, nonpriority unsecured creditors 23% of their total claims, and proposes a plan length of 60 months. The Debtor was able to increase the percentage to nonpriority unsecured creditors because of the \$250.00 per month contribution from the Debtor's in-laws [doc. 86, Declaration of Richard Mark Garber, ¶¶ 3-5]. Creditor is the only nonpriority unsecured creditors to be paid through the Second Amended Plan; there are no other such creditors.

On October 30, 2018, Creditor filed an objection to the Second Amended Plan (the "Creditor's Second Objection") [doc. 84]. On November 2, 2018, the Debtor filed a reply to the Creditor's Second Objection (the "Debtor's Second Reply") [doc. 86]. On November 21, 2018, Creditor filed the declaration of Rafael R. Garcia-Salgado in support of the Creditor's Second Objection [doc. 92]. On November 27, 2018, the Debtor filed another reply [doc. 93]. On December 4, 2018, Creditor filed a response in support of the Creditor's Second Objection (the "Creditor's Response") [doc. 94]. Finally, on December 5, 2018, the Debtor filed a sur-reply [doc. 95].

## **II. DISCUSSION**

### ***A. Current Monthly Income***

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

Pursuant to 11 U.S.C. § 1322(d)(2):

If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

- (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
- (B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
- (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 1 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

Pursuant to 11 U.S.C. 101(10A):

The term "current monthly income"—

- (A) means the average monthly income from all sources that *the debtor receives* . . . without regard to whether such income is taxable income, *derived during the 6-month period* ending on—
  - (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

9:30 AM

CONT...

**Mark Efreem Rosenberg**

**Chapter 13**

- (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(emphasis added.) Pursuant to 11 U.S.C. § 1325 (b)(1):

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then ***the court may not approve the plan unless***, as of the effective date of the plan—

- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;  
or
- (B) ***the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period*** beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(emphasis added.)

***1. 11 U.S.C. § 101(10A)***



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

9:30 AM

CONT...

**Mark Efreem Rosenberg**

**Chapter 13**

In the Creditor's Second Objection, Creditor objects to the Debtor's means calculation test because it does not take into account any year-end distribution of income *derived* during the six-month period preceding the bankruptcy filing, or of income derived during that six-month period but left in GEMS. Creditor's position is that under § 101(10A), current monthly income is defined as the average monthly income the debtor *receives derived* during the six-month period preceding the bankruptcy filing. The timing of the actual receipt is not subject to the temporal qualification of being during the six-month period preceding the bankruptcy filing. Creditor cites *In re Bernard*, 397 B.R. 605, 607 (Bankr. W. D. Mich. 2008) and *In re Robrock*, 430 B.R. 197, 204 (Bankr. D. Minn. 2010), in support of this position.

In *Bernard*, the United States Trustee filed a motion to dismiss the debtors' chapter 7 case pursuant to 11 U.S.C. §§ 707(b)(1)-(2). 397 B.R. at 606-07. The United States Trustee asserted that the debtors underreported their current monthly income by, among other things, failing to include one paycheck that was received outside the applicable six-month period, but was for compensation for work performed within the period. *Id.* The court noted that the definition of current monthly income under § 101(10A) is not restricted to income the debtor derives *and* receives during the applicable six-month period. *Id.* The court then looked at the meaning of derived. *Id.* In relevant part, the court noted,

Giving "derived" its ordinary meaning, namely "formed or developed out of something else," Webster's Third International Dictionary, the Court concludes that CMI includes income that resulted from employment during the relevant six month period even though the Debtor received the actual paycheck for that work after the end of the six month period. Income derived from employment prior to the beginning of the six month period but actually received during the six month period should not be included.

*Id.* The court held that the income has to have been derived during the applicable six-month period, but the timing of its actual receipt is irrelevant. *Id.*

*Robrock* also dealt with a motion to dismiss the debtor's chapter 7 case brought by the United States Trustee pursuant to 11 U.S.C. §§ 707(b)(1)-(2). 430 B.R. at 199-200. Among other things, the court discussed that in calculating the debtor's current monthly income, the calculation should include the income the debtor *accrued* during the applicable six-month period, not just the income that was *disbursed* to the debtor.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

*Id.* at 204. In relevant part the court noted,

The statutory definition does require receipt by the debtor for inclusion of particular income in the calculus; but, the fact of receipt is only the threshold. Under the statutory language, includable income is fixed by a modifying participle—the amount of income “*derived*” *during* the six months is the input for the averaging process, regardless of the date of receipt. The statutory concept is logically understood as “income that *resulted from employment during* the relevant six month period even though the Debtor received the actual paycheck for that work after the end of the six month period.” *In re Bernard*, 397 B.R. 605, 607 (Bankr.D.Mass.2008) (emphasis added).

*Id.* The court held that the income has to have been derived during the applicable six-month period, but can be received after. *Id.* Although *Bernard* and *Robrock* may be used for their persuasive value, they are out of circuit cases that are not binding on this Court.

However, there is case law in the Ninth Circuit. *In re Katz*, 451 B.R. 512 (Bankr. C.D. Cal. 2011), also dealt with a motion to dismiss the debtor’s chapter 7 case brought by the United States Trustee pursuant to 11 U.S.C. §§ 707(b)(1), (b)(2), (b)(3)(B), and (b)(3)(A). 451 B.R. at 513–14. The debtor was a physician and his compensation included, among other things, a quarterly bonus, based on the debtor’s performance and the hospital’s productivity, paid two quarters in arrears. *Id.* The debtor had received a quarterly bonus regularly in the past, and there was no evidence to suggest the bonus would not continue in the future. *Id.* The debtor offered no evidence of declining hospital profitability or any indication of declining performance on his part. *Id.*

During the applicable six-month period the debtor received two quarterly bonuses as compensation for work performed before the six-month period. *Id.* Two days after the debtor’s means test period, the debtor received a third quarterly bonus. *Id.* The court held that current monthly income consists of income *received* during the applicable six-month period, regardless of when it was earned or when the services that led to the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

income were performed. *Id.* at 516–17. In relevant part, the court noted,

In the court's view, the statute also includes income “derived” during the applicable CMI period even if “earned” by debtor's services performed two quarters earlier. According to the Merriam–Webster online dictionary, “derive” is defined as “to take, receive, or obtain especially from a specified source.” Whether income is included in CMI should be determined by when Katz *received* funds, not when the funds were earned. In light of the absence of controlling authority on this issue, it is the court's interpretation that the term “derived” in § 101(10A) provides no additional limiting criterion in order for “income received” during the prescribed 6–month period to be included in the calculation of CMI.

*Id.* The court stated that the two quarterly bonuses received during the six-month period were included in the debtor’s current monthly income calculation, but the third bonus that was received after the applicable period was not included. *Id.*

Creditor argues that *Katz* is not controlling. Creditor is correct that *Katz* is not controlling. However, *Bernard* and *Robrock* are similarly not controlling. Although *Katz* is not controlling, the analysis in the opinion is persuasive to this Court.

The conclusions of other courts that have considered the intended meaning of the term “derived” under § 101(10A) have been inconsistent. *See Miller v. United States Trustee (In re Miller)*, 519 B.R. 819 (10th Cir. BAP 2014) (income must only be received, regardless of when earned); *In re Norenberg*, 554 B.R. 480, 488 (Bankr. D. Mont. 2016) (income derived after the six–month period is not included); *In re Schuldt*, 527 B.R. 278, 280–82 (Bankr. W.D. Mich. 2015) (income need only be received, not both received and earned); *In re Arnoux*, 442 B.R. 769 (Bankr. E.D. Wash. 2010) (income must be both received and earned during the six month period); *United States Trustee v. Meade (In re Meade)*, 420 B.R. 291 (Bankr. W.D. Va. 2009) (requiring connection between compensation received and period of time services rendered); *In re Burrell*, 399 B.R. 620 (Bankr. C.D. Ill. 2008) (income must only be received, regardless of when earned); *In re DeThamplé*, 390 B.R. 716 (Bankr. D. Kan. 2008) (income must only be received, regardless of when earned).

Two other Ninth Circuit cases that have dealt with this issue are *Norenberg* and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

*Arnoux*. In *Norenberg*, a creditor filed a motion to dismiss the debtor’s chapter 7 case for abuse, asserting, among other things, that the debtor’s non-filing spouse’s royalty check (received two days after the applicable six-month period and used for family expenses) should be included in the debtor’s current monthly income. 554 B.R. at 483-84. The debtor’s non-filing spouse held an interest in a family owned entity, and received periodic royalty income, usually in November or December. *Id.* at 483. The court noted that the creditor failed to establish that the royalty check was derived from the applicable six-month period. *Id.* at 488. The court held that income derived after the six-month period, but before the petition date, may be omitted from the debtor’s current monthly income under § 101(10A). *Id.* at 488. The royalty check was not included in the debtor’s current monthly income. *Id.* at 488-89.

In *Arnoux*, the United States Trustee filed a motion for partial summary judgment to dismiss the debtor’s chapter 7 petition for abuse. 442 B.R. at 770. The issue was whether income received outside the applicable period, yet derived from that period, should be included in the debtor’s current monthly income. *Id.* at 770-71. The court held that the definition of “current monthly income” requires that the income be both “received” and “derived” during the statutory six-month period. *Id.* at 776. The debtor’s income that was derived from the applicable six-month period, but was not received during that period, was not included in the calculation. *Id.*

After a review of the cases, the weight of the authority supports the position that to be included in the debtor’s current monthly income under § 101(10A), the income must have been received during the applicable six-month period. Here, even if the Debtor had received a year-end distribution for 2017 from GEMS, it would not have been received until *after* the applicable period. As such, it would not be included in the Debtor’s current monthly income calculation.

Regarding the income left in GEMS and not distributed to the shareholders, additional income of a business is irrelevant for assessing the Debtor’s plan, if that income is not made available to cover household expenses. *See In re Roman*, Case No. 11-01415 BR, 2011 WL 5593143 (Bankr. D.P.R. Nov. 16, 2011). The Debtor contends that his share of GEMS’ 2017 profits was left in GEMS for operational purposes. Creditor has not submitted contrary evidence.

In the Creditor’s Response, Creditor argues that because the net profit of GEMS was *derived* over the entire twelve months of 2017, the fact that it was paid to the Debtor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

9:30 AM

CONT... **Mark Efreem Rosenberg**

**Chapter 13**

in multiple forms—draw, distributed net income and undistributed net income—is immaterial and it all counts as income, one half of which was derived during the six-month applicable period and should be included in the Debtor’s current monthly income calculation. However, the Court cannot conclude that the Debtor’s undistributed share of GEMS 2017 profits was derived during the six-month applicable period. As such, the Court will overrule the Creditor’s Second Objection on this point.

**2. 11 U.S.C. § 1325(b)(1)**

"As previously noted, § 1325 provides that if a trustee or an unsecured creditor objects to a Chapter 13 debtor's plan, a bankruptcy court may not approve the plan unless it provides for the full repayment of unsecured claims or ‘provides that all of the debtor's projected disposable income to be received’ over the duration of the plan ‘will be applied to make payments’ in accordance with the terms of the plan.”

*Hamilton v. Lanning*, 560 U.S. 505, 509–10 (2010); 11 U.S.C. § 1325(b)(1).

“Disposable income is determined by taking the current monthly income of the debtor and subtracting ‘amounts reasonably necessary to be expended’ for the debtor's maintenance and support, charitable contributions, and business expenses.” *In re Schuldt*, 527 B.R. 278, 280–82 (Bankr. W.D. Mich. 2015); 11 U.S.C. § 1325(b)(2).

“Nonetheless, adjustments may be made to this calculation based on known or virtually certain changes in circumstances, given the backward-looking nature of the current monthly income calculation.” *Schuldt*, 527 B.R. at 280–82; *Hamilton v. Lanning*, 560 U.S. at 524. “[W]hen a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.” *Hamilton*, 560 U.S. at 524. “Inclusion of these payments is consistent with the congressional goal of “ensur[ing] that debtors who *can* pay creditors *do* pay them.” *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61 (2011).

Creditor objects to confirmation of the Debtor’s Second Amended Plan because it does not commit all disposable income to the plan. In determining whether the Second Amended Plan commits all the Debtor’s projected disposable income, the Court may take into account changes in the Debtor’s income that are known or virtually certain at the time of confirmation.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

In *In re Foster*, the debtors received annual bonuses as part of an incentive plan from their employers. No. 05-50448 HCD, 2006 WL 2621080, at \*1 (Bankr. N.D. Ind. Sept. 11, 2006). Although from year to year the amount of the bonus differed, the debtors stated that they believed they would continue to receive the bonuses during the five-year period of their chapter 13 plan. *Id.* The debtors' current monthly income calculation did not include any portion of the annual bonuses that was received before the applicable six-month period. *Id.* Similarly, their proposed chapter 13 plan did not incorporate the annual bonuses. *Id.*

The court evaluated the debtors' past and current financial status to determine their projected disposable income. *Id.* at \*8. In relevant part the court noted,

That financial status includes regularly received annual bonuses. The court realizes that the bonus received in February 2005 was outside the 6-month period reported in the debtors' CMI. Judge Keith Lundin, in his Chapter 13 bankruptcy treatise, discusses the possible distorting effect of the 6-month window for CMI calculations:

Because it is based on an average, CMI can be dramatically affected by the timing of the Chapter 13 petition. Filing before a debtor receives a large commission or vacation pay or waiting a few months after the debtor has lost a well-paying job will materially change the CMI calculation. That CMI indicates the debtor has substantial (average) monthly income to pay unsecured creditors through a Chapter 13 plan may distort the reality that for many months during the typical year, the debtor has little or no income after living expenses. Keith M. Lundin, *5 Chapter 13 Bankruptcy, 3d Edition* § 468.1 at 468-5 (2000 & Supp.2006).

Persuaded by Judge Lundin's erudite observations of § 101(10A)(B), this court finds similarities between his examples and the regularly received bonuses that were not paid within 6 months before the debtors' petition. Those bonuses were deposited in the debtors' bank account and may well have been used to pay the debtors' household expenses. At least, there is no evidence that they were not used for payments of the debtors' household expenses.

Accordingly, the court determines that a proper calculation of "all of the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT...**

**Mark Efreem Rosenberg**

**Chapter 13**

debtor's projected disposable income to be received in the applicable commitment period” must include the debtors' past and current financial status. It finds that the debtors failed to commit to the plan all the annual bonuses they regularly received in the past and anticipated for the future. Consequently, the court sustains the Trustee's objection pursuant to § 1325(b)(1)(B).

*Foster*, 2006 WL 2621080, at \*8.

In *In re Coverstone*, the chapter 13 trustee objected to confirmation of the debtors' proposed chapter 13 plan because it failed to commit all the debtors' projected disposable income to the plan. 461 B.R. 629, 631 (Bankr. D. Idaho 2011). Postpetition, the debtors' adult daughter, who lived with the debtors, obtained employment and started contributing to some of the household expenses. *Id.* at 632. The trustee argued that under *Lanning* the daughter's contribution was a known or virtually certain circumstance. *Id.* at 634. The court noted in relevant part,

Britney's regular contributions to household expenses would be considered income for purposes of calculating Debtors' CMI had they been made during the six-month look-back period. While Britney began regularly paying for household expenses only *after* Debtors filed their petition, thus excluding those payments from the statutory definition of CMI, her contributions to household expense may nonetheless be accounted for by this Court in determining Debtors' “projected” disposable income under the “forward-looking” approach articulated in *Lanning*. Under *Lanning*, “when a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.” *Lanning*, — U.S. at —, 130 S.Ct. at 2478. Because Britney's contributions to household expenses would have been included in CMI had they occurred during the six-month look-back period, and because they constitute a change in Debtors' income known at the time of the hearing on confirmation, they can be considered when calculating Debtors' projected disposable income.

*Id.* at 635. The court held that because the debtors' plan failed to account for the payments made by their adult daughter, the plan failed to commit all their available

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efrem Rosenberg**

**Chapter 13**

income. *Id.* The court sustained the trustee's objection. *Id.*

Here, the Debtor states that he did not receive a year-end distribution from GEMS. Moreover, the Debtor states that he did not receive a year-end distribution from GEMS for 2015, 2016 or 2017, and does not anticipate receiving a year end distribution for 2018. Creditor has not submitted any evidence to the contrary. As such, there are no known or virtually certain changes in the Debtor's income at the time of confirmation for the Court to take into account.

Creditor is basing its argument on the fact that the Debtor's income on his 2017 federal tax returns includes the Debtor's 35% share of the profits that were left in GEMS for operational purposes. However, shareholders of an S corporation are required to report on their individual federal income tax return and pay federal income taxes on their pro rata shares of the S corporation's taxable income, whether or not such income is distributed to the shareholder. 26 U.S.C. § 1366(a)(1)(A); 26 C.F.R. § 1.1366-1(a), Income Tax Regs. As such, the Debtor was required to report his pro rata share of GEMS taxable income, whether or not the income was distributed to the Debtor.

As stated above, additional income of a business is irrelevant for the assessment of a debtor's plan, if that income is not made available to cover household expenses. *See In re Roman*, 2011 WL 5593143. [FN1]. The Debtor filed a sworn declaration stating that \$9,628.00, which represents his pro rata share of GEMS taxable income, was left in GEMS for operational purposes. As such, it appears that this income reported on the Debtor's 2017 federal tax return was not available to cover the Debtor's household expenses. Unlike *Foster* and *Coverstone*, the Debtor has not failed to commit to the Second Amended Plan all relevant income regularly received in the past and anticipated for the future.

***B. Religious Schooling and Charitable Contributions***

Pursuant to 11 U.S.C. § 1325(b)(2):

For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

9:30 AM

CONT...

**Mark Efreem Rosenberg**

**Chapter 13**

law to the extent *reasonably necessary* to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(iii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(emphasis added.)

"To be confirmable, a Chapter 13 plan must provide 'that all of the debtor's projected disposable income to be received in the [commitment] period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'" *In re Watson*, 309 B.R. 652, 660–61 (B.A.P. 1st Cir. 2004), *aff'd*, 403 F.3d 1 (1st Cir. 2005) (citing 11 U.S.C. § 1325(b)(1)(B)). "Disposable income" is defined in pertinent part as: income which is received by the debtor and which is not reasonably necessary to be expended—(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions. 11 U.S.C. § 1325(b)(2)(A). "In other words, a bankruptcy court cannot confirm a Chapter 13 plan in which the debtor's expenses are not reasonably necessary." *In re Watson*, 309 B.R. at 660–61. "It is the debtor's burden to prove that expenses are reasonably necessary." *Id.* (citing *In re Webb*, 262 B.R. 685 (Bankr.E.D.Tex.2001)).

**1. The Debtor's Charitable Contributions and Religious Donations**

Pursuant to 11 U.S.C. § 1325(b)(2)(A)(ii),

(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended—

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

...

(ii) for charitable contributions (that meet the definition of "charitable contribution" under [section 548\(d\)\(3\)](#)) to a qualified religious or charitable entity or organization (as defined in [section 548\(d\)\(4\)](#)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made.

“The statute requires a three step test to determine if a charitable contribution may be excluded from a debtor's disposable income.” *In re Petty*, 338 B.R. 805, 808–09 (Bankr. E.D. Ark. 2006). “First, the contribution must be a “charitable contribution” as defined by § 548(d)(3).” *Id.* “Second, the contribution must be made to a “qualified religious or charitable entity or organization” as defined by § 548(d)(4).” *Id.* “The third standard is that the contributions must not exceed 15 percent of the debtor's gross income for the year in which the contributions are made.” *Id.* Section § 1325(b)(2)(A) does not protect religious school tuition payments. *In re Watson*, 309 B.R. 652 (Bankr. E.D. Wash. 2007).

In the Creditor’s Second Objection, Creditor argues that the Debtor is expending 24.9% of his and wife’s net monthly income on his children’s religious schools, which is more than the statutory limit. Creditor contends that the Debtor cannot "sneak" in religious school payments using the charitable contributions category [doc. 87, p. 7]. In the Debtor’s Second Reply, the Debtor argues that the Jewish schools that his children attend charge each family with children enrolled a mandatory membership fee. Debtor contends that this is separate from the tuition fee.

Here, the Debtor scheduled \$621.00 per month in charitable contributions and religious donations. The Debtor’s three charitable expenses consist of two membership fees totaling \$6,800.00, and a banquet fee, the charitable component of which is \$650.00, for a total charitable expense of \$7,450.00 for 2018-2019. [doc. 79].

According to the Internal Revenue Service, membership dues in a synagogue are considered payment for an intangible religious benefit and may be claimed as a tax deduction as a charitable contribution [See doc. 79, Exh. 3; see also Declaration of Mark Efreem Rosenberg, doc. 79, ¶ 10]. The Debtor filed a declaration attesting that the Jewish schools are "qualified religious or charitable entity or organizations[s]" pursuant to IRC § 170(c)(1); as such, a donation to such an entity constitutes a proper

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

deduction pursuant to § 548(d)(4). *Id.*, at ¶ 9. Creditor has not asserted that the Debtor's charitable contributions do not meet the statutory definitions in § 548(d)(3) and (d)(4). Consequently, the Debtor's contributions satisfy the first two standards.

Regarding the third standard, the Debtor may claim a charitable expense of up to 15% of his gross income. The Debtor reported \$108,098.00 in gross income (\$107,848.00 adjusted gross income) on his 2017 federal tax return. Thus, the Debtor would be entitled to spend \$16,214.70 per year on charitable contributions and religious donations. As such, the Debtor's charitable contribution each month is appropriate and within the statutory limit. The Court will overrule the Creditor's Second Objection on this point.

**2. *The Debtor's Religious School Tuition Expense***

Pursuant to 11 U.S.C. § 707(b)(2)(A)(ii)(IV),

[T]he debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,925 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

"Generally, private school tuition is not a reasonably necessary expense." *Id.*; *see also Webb*, 262 B.R. at 690; *Univest-Coppell Village, Ltd. v. Nelson*, 204 B.R. 497 (E.D.Tex.1996). "When deciding whether private school education is reasonably necessary, bankruptcy courts examine the totality of the circumstances to determine whether the debtor's plan reflects a good faith effort to maximize repayment to creditors." *Id.* "Bankruptcy courts have considered both the circumstances of the private schooling and the terms of the debtor's proposed Chapter 13 plan." *Id.* "In particular, bankruptcy courts have examined whether debtors have chosen private school education only where a compelling circumstance exists, or have compensated for such an expense by eliminating other reasonably necessary expenses such as health insurance." *Id.*

In the Reply, the Debtor argues that the tuition expense is a reasonably necessary

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

expense for a devout, Orthodox Jewish family. The Debtor contends that a Jewish education is not a preference; it is an imperative for the preservation of traditional rabbinic Judaism for future generations. Debtor further argues that he has made other sacrifices so that he can afford religious school tuition for his children.

There is no binding precedent in the Ninth Circuit regarding whether parochial school tuition is a reasonably necessary expense. In *In re Cleary*, 357 B.R. 369 (Bankr. Ct. S.C. 2006), the court examined this issue and in relevant part noted,

Prior to the enactment of BAPCPA the courts were split on the subject of reasonableness of private school tuition as a deduction from income to arrive at disposable income. The majority of cases reject private school tuition as a reasonably necessary expense; at least in the absence of educational necessity or special needs. Earlier decisions expressed the “view that a debtor's creditors should not pay tuition for the debtor's children.” *In re McNulty*, 142 B.R. 106 (Bankr.D.N.J.1992); *See also In re Jones*, 55 B.R. 462 (Bankr.D.Minn.1985) (Expressing the view, no longer held in many circles, that the public education was of high quality.). The fulcrum was to balance “creditor's rights against the appropriate basic needs of the debtors and their dependents.” *Watson*[, 403 F.3d] at 8.

The public policy notion that private school tuition is a luxury expense for the purposes of calculating available income under either the chapter 7 means test or for the disposable income analysis in confirming a chapter 13 plan is swept aside by BAPCPA. An allowable expense is that for “each dependent child less than 18 years of age, not to exceed [\$1,925.00] per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonably necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).” § 707(b)(2)(A)(ii)(IV). For some purposes at least, Congress has set forth the public policy that private school tuition can be a reasonable and necessary expense.

*Cleary*, 357 B.R. at 373. Pursuant to 11 U.S.C. § 707(b)(2)(A)(ii)(IV), the Debtor is entitled to spend \$1,925.00 annually for each of his three older children to attend a parochial school. That would be \$481.25 per month. The Debtor is spending

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efreem Rosenberg**

**Chapter 13**

\$1,414.58 per month. Thus, the Court needs to determine whether the remaining \$933.33 is a reasonably necessary expense.

In *Cleary*, the court found that the debtor was not limited to the expense ceiling for private school tuition. 357 B.R. at 374. The court stated,

The Debtor and his family have shown long term enrollment at parochial schools. All of the children attend private school, save one—who plans to return to private school next year. The Debtor's wife attended private school. The Debtor and his wife have strongly held religious convictions. The Debtor's wife would not work outside the home (and did not do so for many years) except to provide additional income to pay for private school tuition. In fact, Mrs. Cleary's pay check is reduced by the amount of tuition for the couple's children who attend the elementary school where she works. The family's sacrifice of other basic expenses to fund private school tuition is noteworthy and, in this case, the deciding factor for the Court in approving the necessity and reasonableness of the expense for private school tuition. *See In re Grawey*, 2001 WL 34076376 (Bankr.C.D.Ill.2001)(private school tuition and belt-tightening in the context of the dischargeability of student loans—sacrifices other basic necessities such as health care insurance). Debtor, if his testimony and schedules are truthful, could file a chapter 7 petition and it is very likely that he would lose no assets to administration for creditors. He is curing a small arrearage on his home loan through the chapter 13 plan, but the amount is *de minimis*. Debtor is giving up furniture secured by purchase money loans. For these reasons the Court finds that private school tuition is a reasonable and necessary expense of the debtor.

Here, the Debtor has demonstrated long-term commitment to educating his children at parochial schools and deeply held religious convictions. The Debtor filed a declaration of Rabbi Eliezer Eidlitz regarding the importance of Jewish day school education for preserving Judaism [doc. 77]. Further, the Debtor has compensated by eliminating other reasonably necessary expenses. The Debtor has scheduled an expense for clothing, laundry and dry cleaning of only \$75.00 per month for six people. The Debtor has stated his family's food expense, at \$1,250.00, even though he could claim more. The Debtor has scheduled medical and dental expenses of \$0.00 and a health insurance expense of \$0.00 per month for six people. The Debtor has claimed an expense for entertainment of only \$75.00 per month, a small emergency

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efrem Rosenberg**

**Chapter 13**

allocation of only \$100.00 per month and \$0.00 per month for home repair allocation. Further, the Debtor has increased the distribution to unsecured creditors by putting forward a 60-month plan and receiving contributions from his family to increase his income [doc. 86, Exh. 5]. The Second Amended Plan provides a 23% distribution to unsecured creditors.

In examining the totality of the circumstances, it appears that the Debtor has made a good faith effort to maximize repayment to creditors, and parochial school tuition is a reasonably necessary expense of the Debtor.

Although the Court will not limit the Debtor's expenses for private school to the statutory limit in 11 U.S.C. § 707(b)(2)(A)(ii)(IV), the *entire* \$933.33 is not a reasonably necessary expense. The Debtor is paying more for parochial school than the debtors in any of the cases cited by the Debtor. The Court recognizes that the Debtor has spent less in some areas in order to afford parochial school education. The Trustee has a standard no-look food allowance of \$250.00 per person per month [*see* doc. 79, Declaration of Mark Efrem Rosenberg, ¶ 12c.]. For a family of six, that would equal \$1,500.00 per month. That is \$250.00 more than the Debtor scheduled as an expense for food. Further, a reasonable budget for a family of six for clothing, laundry and dry cleaning would be \$175.00 per month, which is \$100.00 more than the Debtor scheduled as an expense. Accordingly, the Court finds that \$350.00 of the \$933.33 overage is reasonable and necessary, and the Debtor must commit an additional \$583.33 in disposable income to the Second Amended Plan. The Court will sustain the Creditor's Second Objection in part on this point.

However, as the Debtor's children age, the amount of disposable income that the Debtor will need to commit to his chapter 13 plan will change. For example, the Debtor's 16 year-old child will graduate from high school in two years, and the Debtor will no longer qualify for the parochial school tuition expense, as to that child.

### **III. CONCLUSION**

In light of the foregoing, the Court will sustain the Creditor's Second Objection in part regarding the Debtor's parochial school expense, and overrule the Creditor's Second Objection on all other points.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Mark Efrem Rosenberg**

**Chapter 13**

**FOOTNOTES**

1. As a shareholder of an S corporation, the Debtor may have more control over distributions from GEMS than the typical employee does as to distributions from their employer. If there were evidence that GEMS regularly made year-end distributions to the Debtor in the past, and in 2017 the Debtor apparently had left the distribution in GEMS in order to lower his current monthly income, the Court could take that into account in assessing whether the chapter 13 plan was proposed in good faith under 11 U.S.C. § 1325(a)(3). However, here, there is no evidence that the Debtor personally used a year-end distribution previously or will do so during the plan term.

**Party Information**

**Debtor(s):**

Mark Efrem Rosenberg

Represented By  
Richard Mark Garber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

10:30 AM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#39.00** Motion for order determining value of collateral  
[11 U.S.C. § 506(a), FRBP 3012]

fr. 9/18/18(stip); 10/9/18; 11/6/18;

Docket 46

**\*\*\* VACATED \*\*\* REASON: Order entered on December 4, 2018,  
approving stipulation [doc. 74].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Movant(s):**

Marcelo Martinez

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

10:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#40.00 Debtor's motion to avoid junior lien on principal residence  
with Nationstar Mortgage and Real Time Resolutions

Docket 31

**Tentative Ruling:**

**Unless an appearance is made at the hearing on December 11, 2018, the hearing is continued to January 8, 2019 at 10:30 a.m., and movant must cure the deficiencies noted below on or before December 17, 2018.**

The debtor has not properly served Real Time Resolutions, Inc. ("Real Time") notice of the motion and the motion in accordance with Local Bankruptcy Rules ("LBR") 4003-2(c)(1) and 9013-1(d)(2) and Fed. R. Bankr. P. 7004(b)(3), regarding service on a domestic or foreign corporation or upon a partnership or other unincorporated association, *i.e.* service must be **addressed to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.** The debtor served Real Time at its address listed on the Secretary of State's website, however, the debtor did not address it to an officer, managing agent or general agent.

Further, pursuant to LBR 9013-1(d)(2), notice of the motion and the motion must be filed and served not later than 21 days before the hearing date. Here, 21 days before the hearing date was November 20, 2018. The debtor filed the motion on November 26, 2018, and served notice of the motion on November 21, 2018. As such, Real Time was not provided 21 days-notice as required by LBR 9013-1(d)(2).

**Party Information**

**Debtor(s):**

Robert Winn Jr

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Tuesday, December 11, 2018

Hearing Room 301

10:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#41.00 Debtor's motion to avoid junior lien on principal residence  
with Specialized Loan Servicing LLC

Docket 32

**Tentative Ruling:**

**Unless an appearance is made at the hearing on December 11, 2018, the hearing is continued to January 8, 2019 at 10:30 a.m., and movant must cure the deficiencies noted below on or before December 17, 2018.**

The debtor has not properly served Specialized Loan Servicing LLC (“Specialized”) notice of the motion and the motion in accordance with Local Bankruptcy Rules (“LBR”) 4003-2(c)(1) and 9013-1(d)(2) and Fed. R. Bankr. P. 7004(b)(3), regarding service on a domestic or foreign corporation or upon a partnership or other unincorporated association, *i.e.* service must be **addressed to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process**. The debtor served Specialized at its address listed on the Secretary of State’s website, however, the debtor did not address it to an officer, managing agent or general agent.

Finally, pursuant to LBR 9013-1(d)(2), notice of the motion and the motion must be filed and served not later than 21 days before the hearing date. Here, 21 days before the hearing date was November 20, 2018. The debtor filed the motion on November 26, 2018, and served notice of the motion on November 21, 2018. As such, Specialized was not provided 21 days-notice as required by LBR 9013-1(d)(2).

**Party Information**

**Debtor(s):**

Robert Winn Jr

Represented By  
Julie J Villalobos

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:13-16654 Roselle Salazar Angellano**

**Chapter 13**

**#42.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 3/13/18; 4/10/18; 6/12/18; 8/7/18; 10/9/18

Docket 70

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Roselle Salazar Angellano

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:14-14688 Yacxiri Karina Leiva Abrego**

**Chapter 13**

**#43.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 10/9/18

Docket 126

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 11/15/18**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yacxiri Karina Leiva Abrego

Represented By  
D Justin Harelik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:15-11981 Polonia Katarina Bright Johnson and Alton Earl Johnson**

**Chapter 13**

**#44.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18 ; 11/6/18;

Docket 94

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Polonia Katarina Bright Johnson

Represented By  
Sanaz S Bereliani

**Joint Debtor(s):**

Alton Earl Johnson

Represented By  
Sanaz S Bereliani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:15-12949 Veronica Nunez**

**Chapter 13**

**#45.00** Trustee's motion to dismiss case due to expiration of plan

Docket 28

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Veronica Nunez

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:16-10495 Indira LaRoda**

**Chapter 13**

**#46.00** Trustee's motion to dismiss case for failure to make plan

fr. 9/18/18 ; 10/9/18; 11/6/18;

Docket 81

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Indira LaRoda

Represented By  
Michael F Chekian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12565 Hamid Reza Janbakhsh-Mazlaghani**

**Chapter 13**

**#47.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18; 11/6/18;

Docket 38

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hamid Reza Janbakhsh-Mazlaghani

Represented By  
Ali R Nader

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:16-12786 Mirna Del Carmen Lopez**

**Chapter 13**

**#48.00** Trustee's motion to dismiss case for failure  
to make plan payments

fr. 5/8/18; 6/12/18; 7/10/18; 8/7/2018; 9/18/18 ; 11/6/18;

Docket 51

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mirna Del Carmen Lopez

Represented By  
Leonard Pena

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10051 Glenn Alan Badgett**

**Chapter 13**

**#49.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 9/18/18 ; 11/6/18;

Docket 62

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Glenn Alan Badgett

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:17-10771 John Zaccaro**

**Chapter 13**

**#50.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 10/9/18

Docket 33

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

John Zaccaro

Represented By  
Raj T Wadhvani

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:17-11860 Juan Morales and Maria Morales**

**Chapter 13**

**#51.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 11/6/18

Docket 45

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Morales

Represented By  
Rebecca Tomilowitz

**Joint Debtor(s):**

Maria Morales

Represented By  
Rebecca Tomilowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:00 AM

**1:17-12522 Taghreed Yaghnam**

**Chapter 13**

**#52.00** Trustee's motion to dismiss case for failure to make plan payments

fr. 10/9/18; 11/6/18;

Docket 41

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Taghreed Yaghnam

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:14-13105 Teri Lee Spottiswood**

**Chapter 13**

**#53.00** Objection of United States Trustee to notice of mortgage payment change filed in connection with proof of claim 3

fr. 10/9/18(stip)

Docket 50

**\*\*\* VACATED \*\*\* REASON: Order entered on December 4, 2018, approving stipulation [doc. 66].**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Teri Lee Spottiswood

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:16-12647 Freddy Benjamin Castro**

**Chapter 13**

**#54.00** Motion to vacate order or, in the alternative, for reconsideration of, orders avoiding lien of Deutsche Bank National Trust Company and confirming debtor's chapter 13 plan

fr. 6/12/18; 9/18/18(stip); 10/9/18(stip); 11/6/18(stip)

**Stipulation to continue filed 12/10/18**

Docket 52

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Freddy Benjamin Castro

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:16-13190 JeanPaul Reneaux**

**Chapter 13**

**#55.00** Motion re: objection to claim number 2 by claimant Wells Fargo Bank, N.A., et al. c/o Carrington Mortgage Services, LLC.,

Docket 66

**\*\*\* VACATED \*\*\* REASON: Order approving stip to continue entered 12/10/18. Hearing continued to 2/12/19 at 11:30 AM.**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

JeanPaul Reneaux

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11288 Neli Maria Negrea**

**Chapter 13**

**#56.00** Motion re: objection to claim number 8 by claimant Ellen Orsa,  
request for attorney's fees and costs

Docket 32

**Tentative Ruling:**

The Court will continue this hearing to **11:30 a.m. on January 8, 2019.**

Appearances should not be made on December 11, 2018.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Neli Maria Negrea

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:17-12522 Taghreed Yaghnam**

**Chapter 13**

**#57.00** Motion for allowance and payment of administrative expense

Docket 46

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Taghreed Yaghnam

Represented By  
James Geoffrey Beirne

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11504 Juan Pedro Torres**

**Chapter 13**

**#58.00** Debtor's motion for authorization to modify residential mortgage

Docket 36

**\*\*\* VACATED \*\*\* REASON: Order granting motion entered 11/15/2018**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Juan Pedro Torres

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11560 Elizabeth Roberts**

**Chapter 13**

**#59.00** Order to show cause why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

Docket 32

**Tentative Ruling:**

On November 7, 2018, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at Confirmation Hearing* (the "OSC") [doc. 32], on the grounds that the debtor's counsel failed to appear at the confirmation hearing as required by LBR 3015-1(d). The debtor's counsel was ordered to explain his failure to appear and file and serve on the debtor a written response to the OSC no later than November 27, 2018.

The debtor's counsel timely filed a response. However, contrary to the OSC, the debtor's counsel did not serve his response on the debtor. If the debtor's counsel or an appearance attorney appears at the continued confirmation hearing on December 11, 2018 at 9:30 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued confirmation hearing, the Court may impose sanctions on the debtor's counsel.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elizabeth Roberts

Represented By  
Anthony P Cara

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:18-11799 Farahnaz Alvand**

**Chapter 13**

**#60.00** Order to show cause why debtor's counsel should not  
disgorge fees for failure to perform services

fr. 10/9/18

Docket 33

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Farahnaz Alvand

Represented By  
Armen Shaghzo

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 11, 2018**

**Hearing Room 301**

11:30 AM

**1:18-12178 Jose Espino**

**Chapter 13**

**#61.00** Trustee's objection to the debtor's exemptions

Docket 20

**Tentative Ruling:**

In response to the chapter 13 trustee's objection, the debtor filed an amended Schedule C removing his claim of exemption under California Code of Civil Procedure § 704.070 [doc. 23].

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jose Espino

Represented By  
Lionel E Giron

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:13-16706 Hector Cahuantzi Gutierrez**

**Chapter 13**

**#1.00 Motion for relief from stay [RP]**

US BANK N.A.  
VS  
DEBTOR

fr. 11/14/18

Docket 80

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hector Cahuantzi Gutierrez

Represented By  
Rabin J Pournazarian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:15-10295 Adolph Earl Jones and Katherine Johnson Jones

Chapter 13

#2.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 11/7/18

Docket 58

**Tentative Ruling:**

**Tentative Ruling from 11/7/2018**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Adolph Earl Jones

Represented By



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

**Hearing Room 301**

9:30 AM

CONT... **Adolph Earl Jones and Katherine Johnson Jones**  
Allan S Williams

**Chapter 13**

**Joint Debtor(s):**

Katherine Johnson Jones

Represented By  
Allan S Williams

**Movant(s):**

JPMORGAN CHASE BANK,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:15-13626 Dwayne Rice Corbitt

Chapter 13

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

fr. 9/12/18; 10/3/18; 10/17/18; 11/14/18

**Stip for adequate protection fld 12/10/18**

Docket 103

\*\*\* VACATED \*\*\* REASON: APO entered 12/11/18.

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dwayne Rice Corbitt

Represented By  
Ellen M. Cheney  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-12249 Jason Clay Holt

Chapter 7

#4.00 Motion for relief from stay [PP]

HONDA LEASE TRUST  
VS  
DEBTOR

Docket 10

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jason Clay Holt

Pro Se

**Movant(s):**

HONDA LEASE TRUST

Represented By  
Vincent V Frounjian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Jason Clay Holt**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:17-10880 LaFaye Francisco**

**Chapter 13**

**#5.00** Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

Docket 44

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

LaFaye Francisco

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-12835 Carol Yesenia Carrillo

Chapter 13

#5.10 Motion for relief from stay [RP]

JAMES WYATT, TRUSTEE OF THE J&D CONSULTING/MANAGEMENT PLAN  
VS  
DEBTOR

Docket 9

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

**Party Information**

**Debtor(s):**

Carol Yesenia Carrillo

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Carol Yesenia Carrillo**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:14-14009 Michele Amy Schneider**

**Chapter 13**

**#5.20 Motion for relief from stay [RP]**

WILMINGTON SAVINGS FUND SOCIETY FSB  
VS  
DEBTOR

fr. 11/7/18; 12/5/18

Docket 55

**Tentative Ruling:**

**Tentative Ruling from 11/7/2018**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Michele Amy Schneider**

**Chapter 13**

**Debtor(s):**

Michele Amy Schneider

Represented By  
Joshua L Sternberg

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Raymond Jereza

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-12375 Stefanie Vianey Barajas Espinoza

Chapter 7

#5.30 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION  
VS  
DEBTOR

fr. 12/5/18

Docket 7

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Stefanie Vianey Barajas Espinoza

Represented By  
Sydell B Connor

**Movant(s):**

NISSAN MOTOR ACCEPTANCE

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Stefanie Vianey Barajas Espinoza**

**Chapter 7**

Michael D Vanlochem

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-12566 Wayne Holloway

Chapter 7

#5.40 Amended motion for relief from stay [UD]

PUNAM GOHEL  
VS  
DEBTOR

fr. 12/5/18

Docket 15

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wayne Holloway

Pro Se

**Movant(s):**

Punam Gohel

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT...**

**Wayne Holloway**

Helen G Long

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:15-14067 Brian Igbini

Chapter 13

#5.50 Motion for relief from stay [RP]

U.S. BANK, NA  
VS  
DEBTOR

fr. 12/5/18

**Stip for adequate protection filed 12/7/18**

Docket 60

\*\*\* VACATED \*\*\* REASON: Order approving stipulation entered  
12/10/18.

**Tentative Ruling:**

**Party Information**

**Debtor(s):**

Brian Igbini

Represented By

Anthony Obehi Egbase  
Crystle Jane Lindsey  
Edith Walters  
W. Sloan Youkstetter

**Movant(s):**

U.S. Bank, N.A., successor trustee to

Represented By

Daniel K Fujimoto  
Caren J Castle

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#5.60 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 12/5/18

Docket 25

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Robert Winn Jr

Represented By

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Robert Winn, Jr**

Julie J Villalobos

**Chapter 13**

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

9:30 AM

1:18-10369 Jaime Gutierrez

Chapter 13

#5.70 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY  
VS  
DEBTOR

fr. 12/5/18

**Stip for adequate protection fld 12/11/18**

Docket 45

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jaime Gutierrez

Represented By  
Raj T Wadhvani

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Dane W Exnowski

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11849 Leticia E. Donis Duran**

**Chapter 13**

**#5.80** Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING LLC  
VS  
DEBTOR

fr. 12/5/18

Docket 19

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Leticia E. Donis Duran

Represented By  
Donald E Iwuchuku

**Movant(s):**

Lakeview Loan Servicing, LLC

Represented By  
Darlene C Vigil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

**1:17-10673 Hermann Muennichow**

**Chapter 7**

Adv#: 1:18-01077      The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

**#6.00**      Status conference re: complaint for interpleader

fr. 9/5/18

Docket      1

**\*\*\* VACATED \*\*\* REASON: Status conference continued to 2/20/19 at  
1:30 p.m.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hermann Muennichow

Represented By  
Stuart R Simone

**Defendant(s):**

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Pro Se

**Plaintiff(s):**

The Lincoln National Life Insurance

Represented By  
Erin Illman

**Trustee(s):**

David Seror (TR)

Represented By  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

**1:17-10825 Amie Suzanne Greenberg**

**Chapter 7**

Adv#: 1:17-01061 Rubin v. Greenberg

**#7.00** Pretrial conference re: complaint to determine dischargeability  
of debt pursuant to sections 523(a)(15)

fr. 8/23/17; 10/25/17; 4/4/18;5/13/18; 6/13/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 11/7/18 continuing hearng to  
3/20/19 at 1:30 PM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Amie Suzanne Greenberg

Represented By  
Steven J Renshaw

**Defendant(s):**

Amie Greenberg

Pro Se

**Plaintiff(s):**

Jeff Rubin

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01099 Dachev et al v. DiMaggio

- #8.00** Status conference re: complaint for:
1. Denial of debtor's discharge [11 U.S.C. § 727]
  2. Determination that debt is non-dischargeable [11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]
- fr. 2/7/18; 10/17/18(stip)

Docket 1

**Tentative Ruling:**

During the prior status conference, the Court instructed the plaintiff to file a notice of dismissal in the debtor's bankruptcy case no later than November 21, 2018. The plaintiffs did not file their notice of dismissal until November 28, 2018. Consequently, the 14-day notice period will expire on December 12, 2018, the date of this status conference.

To assess if a party in interest substitutes into this action prior to the expiration of the 14-day deadline, the Court will continue this status conference to **1:30 p.m. on December 19, 2018.**

Appearances on December 12, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Krasimir Dachev

Represented By  
Matthew A Lesnick

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

---

1:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

Peace for You Peace for Me

Represented By  
Matthew A Lesnick

Svilosa AD

Represented By  
Matthew A Lesnick

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:17-12750 Maryam Azizi**

**Chapter 7**

Adv#: 1:17-01108 Hassibi v. Homayoun

**#9.00** Status conference re: complaint of plaintiff  
pursuant to 11 USC § 523(a)(2)

fr. 2/14/18; 5/16/18; 6/20/18, 9/12/18, 11/7/18

**Stipulation filed 11/26/18**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Judgment entered 11/28/18 re settlement**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maryam Azizi

Represented By  
David S Hagen

**Defendant(s):**

Shahram Homayoun

Pro Se

**Joint Debtor(s):**

Shahram Homayoun

Represented By  
David S Hagen

**Plaintiff(s):**

Mohammad Hassibi

Represented By  
Kathleen P March

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

**1:17-13375 Adir Setton**

**Chapter 7**

Adv#: 1:18-01035 Kessler v. Setton

**#10.00** Pretrial conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18; 10/31/18

Docket 1

**Tentative Ruling:**

Contrary to the Court's instructions from the prior pretrial conference, the parties did not file an amended joint pretrial stipulation curing the deficiencies from their prior joint pretrial stipulation. In addition, the plaintiff did not submit a scheduling order or file a unilateral pretrial statement explaining why the parties did not timely file an amended joint pretrial stipulation.

The Court intends to issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

**10/31/2018 Tentative:**

The untimely joint pretrial stipulation (the "JPS") filed by the parties on October 26, 2018 does not comply with Local Bankruptcy Rule ("LBR") 7016-1(b)(2), as specified below.

Contrary to LBR 7016-1(b)(2)(C), the parties do not clearly set forth the issues of law to be litigated at trial. The plaintiff's complaint asserts a claim under 11 U.S.C. § 523(a)(6), and the language in the JPS appears to reassert that claim.

In paragraph 41 of the JPS, the parties indicate that the plaintiff intends to request denial of the defendant's discharge under 11 U.S.C. § 727(a)(3). However, the plaintiff has not moved to file an amended complaint. Moreover, because the defendant has already received his discharge, the plaintiff is limited to requesting *revocation* of the defendant's discharge under one of the grounds set forth in 11 U.S.C. § 727(d); any claim for denial of the defendant's discharge under 11 U.S.C. § 727(a) is time barred.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

In addition, the parties' exhibit list does not comply with LBR 7016-1(b)(2)(D). The parties do not specify which party is offering which exhibit. Moreover, the parties do not provide an adequate description of each exhibit, which must include information sufficient for identification. For example, the parties do not provide sufficient information for exhibit nos. 24-26 and 28. Have the parties exchanged exhibits they intend to offer at trial?

Contrary to LBR 7016-1(b)(2)(E), the parties have not specified which witness is being offered by which party. The parties also do not provide a summary of the proposed testimony by each witness.

The parties list certain doctors in their witness list; do the parties intend to call any of these doctors as expert witnesses? If so, have the parties exchanged narrative statements of the qualifications of the experts? Have the parties exchanged expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2)?

In the paragraph listing their witnesses, the parties state that their witnesses "include, but are not limited to" the listed witnesses. The parties must provide a *complete* list of witnesses. Any witness not listed in the parties' witness list will not be permitted to testify at trial.

Concurrently with submitting their amended joint pretrial stipulation, the parties also must submit a joint witness schedule indicating on which day of trial, and at which time, each witness will testify and estimating the duration of each witness's testimony.

Contrary to LBR 7016-1(b)(2)(F), the parties have not specified if there are any other matters that may affect trial, such as anticipated motions in limine, motions to withdraw reference or other pretrial motions. Moreover, contrary to LBR 7016-1(b)(2)(G), the parties have not indicated if discovery is complete and, contrary to LBR 7016-1(b)(2)(H), the parties have not indicated if they are ready for trial.

Contrary to LBR 7016-1(b)(2)(I), the parties have not provided an estimate of the length of trial. The parties also do not include the language from LBR 7016-1(b)(2)(J) in the JPS.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Adir Setton**

**Chapter 7**

Finally, the parties have not updated the Court regarding the Court-ordered mediation the parties were required to attend by August 31, 2018 [doc. 19]. Did the parties attend mediation? The parties must be prepared to discuss these issues.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Adir Setton

Represented By  
Stephen S Smyth  
William J Smyth

**Defendant(s):**

Adir Setton

Pro Se

**Plaintiff(s):**

Avigdor Kessler

Represented By  
Martin S Wolf

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10385 Jorge Alberto Romero II**

**Chapter 7**

Adv#: 1:18-01057 Acevedo v. Romero II

**#11.00** Status conference re: Amended complaint for nondischargeability  
11 U.S.C. 523a (2) debt obtained through fraud, embezzlement  
and false pretenses

fr. 09/12/18; 10/31/18

Docket 14

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/15/19.

Deadline to file pretrial motions: 4/1/19.

Deadline to complete and submit pretrial stipulation in accordance with Local  
Bankruptcy Rule 7016-1: 4/24/19.

Pretrial: 1:30 p.m. on 5/8/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after  
this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions  
against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**Party Information**

**Debtor(s):**

Jorge Alberto Romero II

Pro Se

**Defendant(s):**

Jorge Alberto Romero II

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Jorge Alberto Romero II**

**Chapter 7**

**Plaintiff(s):**

Carlos Acevedo

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01105 QUEEN et al v. Anderson

**#12.00** Order to show cause why defendant's answer should not be stricken for failure to prosecute

Docket 0

**Tentative Ruling:**

On November 7, 2018, the Court held a status conference. The defendant did not appear. In addition, the defendant did not meet and confer with the plaintiffs in accordance with Local Bankruptcy Rule ("LBR") 7026-1 and did not participate in the filing of a joint status report in accordance with LBR 7016-1(a).

As a result, on November 8, 2018, the Court issued the *Order to Show Cause Why Defendant's Answer Should Not be Stricken for Failure to Prosecute* (the "OSC") [doc. 9]. In the OSC, the Court instructed the defendant to file a response to the OSC no later than November 28, 2018.

The defendant did not timely file a response to the OSC and did not otherwise file any updates in preparation for the continued status conference. Consequently, the Court will strike the defendant's answer [doc. 6], and the plaintiff may proceed by way of default judgment.

The Court will prepare the order striking the defendant's answer.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**Defendant(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Christopher Anderson**

**Chapter 7**

**Plaintiff(s):**

WAYNE QUEEN

Represented By  
Michael Goch

TONY WAYNE BLASSINGAME

Represented By  
Michael Goch

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-11488 Christopher Anderson**

**Chapter 7**

Adv#: 1:18-01105 QUEEN et al v. Anderson

**#13.00** Status conference re: complaint 1) objecting to discharge [11 USC sections 727(a)(2)(A), (a)(3), (a)(4), (a)(5) and (a)(6)]; 2) to determine non-dischargeability of debt [11 USC sections 523(a)(2)(A) and (a)(6)]

fr. 11/7/18

Docket 1

**Tentative Ruling:**

In light of the fact that the Court will strike the defendant's answer, the plaintiffs may proceed to entry of default and default judgment.

To obtain entry of default, the plaintiffs must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiffs will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiffs must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **February 1, 2019**.

If the plaintiffs will be seeking to recover attorneys' fees, the plaintiffs must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

**Party Information**

**Debtor(s):**

Christopher Anderson

Represented By  
Daniel King

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Christopher Anderson**

**Chapter 7**

**Defendant(s):**

Christopher Anderson

Pro Se

**Plaintiff(s):**

WAYNE QUEEN

Represented By  
Michael Goch

TONY WAYNE BLASSINGAME

Represented By  
Michael Goch

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10329 Ali P Dargah**

**Chapter 13**

Adv#: 1:18-01045 Dargah v. Dargah et al

**#13.10** Status conference re: first amended Complaint for:

- 1) Fraud
- 2) Faud based on forgery;
- 3) Civil conspiracy;
- 4) Misconduct of neglect of notary public;
- 5) Quit title;
- 6) Cancellation of instrument;
- 7) Slander of title;
- 8) Declaratory relief;
- 9) Injunctive relief

fr. 10/17/18; 12/5/18

CROSS COMPLAINT

Jeff Daragah, an individual  
Cross-Complainant

v

Ali P. Dargah, an individual  
Cross-Defendant

Docket 10

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 4/1/19.

Deadline to file pretrial motions: 4/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Ali P Dargah**

**Chapter 13**

Bankruptcy Rule 7016-1: 4/24/19.

Pretrial: 1:30 p.m. on 5/8/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik

**Defendant(s):**

Jeff Javad Dargah	Pro Se
Jeff Javad Dargah, an individual	Pro Se
Gerakdune Granda an individual	Pro Se
The Bank of New York Mellon fka	Pro Se
Shahla Dowlati, an individual	Pro Se
All Persons or Entities Unknown	Pro Se
Does 1 to 10, Inclusive	Pro Se

**Plaintiff(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik  
David M Kritzer

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
-----------------------------	--------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

**1:18-10468 Patrick Abrahamian**

**Chapter 7**

Adv#: 1:18-01063 Cotton v. Abrahamian

**#13.20** Status conference re complaint to determine the non-dischargeability of debts under 11U.S.C. §523(a)(6)

fr. 7/18/18; 10/3/18; 12/5/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 12/7/18.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Patrick Abrahamian

Represented By  
Leo Fasen

**Defendant(s):**

Patrick Abrahamian

Pro Se

**Plaintiff(s):**

Thomas Christian Cotton

Represented By  
Andrew R Delaflor

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

**1:18-11243 Jeff Davani**

**Chapter 7**

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

**#13.30** Status conference re: first amended complaint objecting to discharge of debt under 11 U.S.C. sec 523(a)(2), (a)(4), and (a)(6)

fr. 12/5/18

Docket 8

**\*\*\* VACATED \*\*\* REASON: Order entered continuing hearing to 1/9/19 at 1:30 p.m. - jc**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jeff Davani

Pro Se

**Defendant(s):**

Jeff Davani an individual, doing

Represented By  
Michael H Raichelson

**Joint Debtor(s):**

Nadia Davani

Pro Se

**Plaintiff(s):**

Yvonne Johnson

Represented By  
Stephen M Sanders

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
D Edward Hays

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

1:30 PM

**1:16-10045 Duane Daniel Martin**

**Chapter 7**

Adv#: 1:18-01106 David K. Gottlieb in his capacity as Chapter 7 Tru v. Roxe, LLC, a

- #13.40** Status conference re: complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
  2. Recover property of the estate nature of suit

fr. 11/7/18(stip); 12/5/18

**Stipulation to continue filed 12/10/18**

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:30 p.m. on January 9, 2019**, to be held in connection with the hearing regarding defendants' motion to dismiss [doc. 15].

Appearances on December 12, 2018 are excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Defendant(s):**

Roxe, LLC, a California limited	Pro Se
Derek Folk, an individual	Pro Se
Michael Martin an individual	Pro Se
Doe 1 through DOE 10, inclusive	Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

---

1:30 PM

CONT... Duane Daniel Martin

Chapter 7

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley  
Joseph R Dunn

**Plaintiff(s):**

David K. Gottlieb in his capacity as

Represented By  
Beth Ann R Young

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

1:30 PM

1:17-12434 Robin DiMaggio

Chapter 7

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

#13.50 Status conference re complaint for (1) denial of debtor's discharge [11 U.S.C. 727] (2) Non-Dischargeability of debt [ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6)]

fr. 3/7/18; 8/8/18; 8/22/18; 10/17/18; 12/5/18

Docket 1

**Tentative Ruling:**

In connection with the pending motion for default judgment, the Court will continue this status conference to **1:30 p.m. on February 6, 2019.**

**Party Information**

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:18-12051 Mr. Tortilla, Inc.**

**Chapter 11**

**#14.00** Motion to Extend Time to Assume or Reject Unexpired  
Executory Contract for Real Property Lease

Docket 56

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mr. Tortilla, Inc.

Represented By  
M. Jonathan Hayes  
Roksana D. Moradi-Brovia



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-11748 Steven Mark Rosenberg**

**Chapter 7**

Adv#: 1:17-01096 Rosenberg v. Deutsche Bank National Trust Company, As Trustee F

**#14.10** Motion for sanctions against plaintiff Steven Mark Rosenberg pursuant to FRCP Rule 11 and FRBP Rule 9011; in the form of monetary sanctions in the striking of the notice of motion and motion to alter or amend judgment

fr. 12/5/18

Docket 61

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On June 30, 2017, Steven Mark Rosenberg ("Plaintiff") filed a voluntary chapter 7 petition. On November 27, 2017, Plaintiff filed a complaint against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, Inc. ("Ocwen"), Alliance Bancorp, Inc., Alliance Bancorp Estate Trustee Charles A. Stanziale, Jr., MERS Mortgage Electronic Registration Systems, Inc. ("MERS"), One West Bank and CIT Bank, N.A. The complaint alleges claims asserting a violation of 11 U.S.C. § 524(a), violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(B) and (C), fraudulent concealment, violation of 18 U.S.C. § 157 and requesting declaratory relief. At all times during the course of this adversary proceeding, Plaintiff has represented himself.

On January 23, 2018, Plaintiff voluntarily dismissed CIT Bank, N.A. and Alliance Bancorp, Inc. as defendants, leaving Deutsche Bank, MERS and OCwen (collectively, "Defendants") [doc. 13]. On February 13, 2018, Ocwen and MERS filed a motion for judgment on the pleadings (the "Motion for Judgment") [doc. 16]. In the Motion for Judgment, Ocwen and MERS argued that: (A) any forgery, cancellation or rescission claims are time barred; (B) Plaintiff's claim for violation of § 524(a)(2) failed because a discharge does not void a creditors' *in rem* rights; (C) Plaintiff's claim for violation of FRBP 3001(c)(2)(B) failed because a creditor's right to foreclose passes through a

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

bankruptcy case; (D) Plaintiff's fraud claims are time barred; and (E) Plaintiff lacks standing to pursue the fraud claims.

On March 9, 2018, Deutsche Bank filed a joinder in the Motion for Judgment and the RJN [doc. 24]. On March 21, 2018, Plaintiff filed an opposition to the Motion (the "Opposition to Judgment") [doc. 30]. In the Opposition to Judgment, Plaintiff argued that: (A) his claims are not time barred because the adversary proceeding was a continuation of a previously filed probate action; (B) equitable tolling applies to allow Plaintiff to proceed with his claims; (C) that Plaintiff has standing because Plaintiff "is an affected party;" and (D) that Plaintiff has otherwise stated claims for relief against Defendants.

On May 2, 2018, the Court held a hearing on the Motion for Judgment. Plaintiff and Defendants appeared at the hearing as noted on the record and presented oral argument. In advance of the hearing, the Court prepared a tentative ruling granting the Motion for Judgment, which the Court subsequently adopted as its final ruling (the "Ruling") [doc. 41]. In the Ruling, the Court held: (A) Plaintiff's claims are time barred and equitable tolling does not apply; (B) Defendants did not violate 11 U.S.C. § 524(a); (C) that FRBP 3001(c)(2) does not give rise to a cause of action, and that, in any event, liens survive bankruptcy whether or not a creditor files a proof of claim; (D) that Plaintiff lacks standing to pursue his fraudulent concealment claims regarding Defendants' assignments because California law provided only for *post*-foreclosure standing, and Plaintiff had not asserted any *pre*-foreclosure damages; (E) that this Court did not have jurisdiction to prosecute Defendants for bankruptcy fraud; and (F) that there was no basis for declaratory relief.

On May 14, 2018, the Court entered the *Judgment Following Defendants' Motion for Judgment on the Pleadings* [doc. 50]. On June 7, 2018, the Court entered an *Amended Judgment Following Defendants' Motion for Judgment on the Pleadings* (the "Judgment") [doc. 56].

On June 11, 2018, Plaintiff filed a motion to alter or amend the Judgment (the "Motion to Alter") [doc. 58], seeking reconsideration of the Judgment. In the Motion to Alter, Plaintiff stated that he sought relief from the Judgment pursuant to Federal Rule of Civil Procedure ("Rule") 59(e), as applied to bankruptcy cases by FRBP 9023. In the Motion to Alter, Plaintiff once again asserted that equitable tolling applies to

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

this proceeding and that Plaintiff has standing to challenge assignments. This time, Plaintiff added the argument that Plaintiff has standing under Rule 17 because Plaintiff filed the adversary proceeding in his capacity as an administrator of his father's probate estate. In accordance with this Court's self-scheduling procedures, which prohibits self-scheduling of motions for reconsideration, Plaintiff did not set the Motion to Alter for hearing. In addition, Defendants did not file an opposition to the Motion.

Instead, on September 7, 2018, Deutsche Bank filed a motion to sanction Plaintiff under FRBP 9011 (the "Motion") [doc. 61]. In the Motion, Deutsche Bank requested non-monetary sanctions in the form of striking the Motion to Alter and monetary sanctions in the amount of \$6,350 incurred filing the Motion. On September 14, 2018, Ocwen and MERS filed a joinder to the Motion [doc. 68], requesting non-monetary sanctions in the form of striking the Motion to Alter. On November 20, 2018, Plaintiff filed two responses to the Motion (collectively, the "Response") [docs. 72, 73], arguing that he filed the Motion to Alter because he believed the Court committed a clear error of law and requesting leniency as a *pro se* party. On November 21, 2018, the Court entered an order denying the Motion to Alter [doc. 74].

## II. ANALYSIS

Pursuant to FRBP 9011(b)—

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, --

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (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 establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Steven Mark Rosenberg**

**Chapter 7**

- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Pursuant to FRBP 9011(c)—

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

- (1) How initiated

- (A) By Motion

A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

- (2) Nature of sanction; limitations

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Steven Mark Rosenberg**

**Chapter 7**

effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

"An award of sanctions for a violation of FRBP 9011 or its counterpart in the FRCP, Rule 11, is an exceptionally serious matter, and is reserved for those rare situations in which a claim or defense is asserted without any evidentiary support or legal basis, or for improper purposes, such as to harass or delay an opponent, or cause undue expense." *In re Quinones*, 543 B.R. 638, 646 (Bankr. N.D. Cal. 2015). "We accord the district court's determination whether to impose sanctions deference, because 'the district court is better situated than the court of appeals to marshal the pertinent facts and apply [the law].'" *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th Cir. 1995) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402-03 (1990)).

The Motion is based on two grounds: first, that Plaintiff did not set the Motion to Alter for hearing and, second, that Plaintiff's arguments in the Motion to Alter are meritless and that Plaintiff did not have an applicable basis under Rule 59(e) to move to alter or amend the Judgment. Regarding the first basis, the Court's self-calendaring procedures, located on the Court's website, explicitly state that parties may not self-calendar calendar motions for reconsideration. In this case, the Court declined to set the Motion to Alter for hearing and elected to rule on the Motion to Alter without hearing. As such, the Court deciding not to set the Motion to Alter for hearing is not a basis to sanction Plaintiff.

As to the second basis, Defendants assert that Plaintiff's arguments in the Motion to Alter were meritless because Defendant did not have grounds to move for relief under Rule 59(e). To obtain relief under Rule 59(e), the moving party must show that the court "(1) is presented with newly discovered evidence, (2) committed clear error or

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

---

2:30 PM

CONT... **Steven Mark Rosenberg**

**Chapter 7**

the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (internal citation omitted).

The Court also will not sanction Plaintiff on this basis. Here, Plaintiff did not argue that there was new evidence or an intervening change in law. Rather, Plaintiff believed the Court committed clear error and that the Judgment will result in manifest injustice. To this end, although Plaintiff repeated many of the arguments he made in the Opposition to Judgment in the Motion to Alter, Plaintiff did present new arguments regarding standing, i.e., that Plaintiff has standing under Rule 17 as an administrator of his father's estate. Plaintiff could have presented these arguments in the Opposition to Judgment. Nevertheless, given that Plaintiff is *pro se* and this is the first motion to reconsideration filed by Plaintiff in this adversary proceeding and Plaintiff's bankruptcy case, Plaintiff may have believed he could present the argument in a motion under Rule 59(e). Further, given that the Court had not previously addressed whether Plaintiff would have standing as an administrator of his father's estate, Plaintiff's arguments under Rule 17 are not so frivolous as to trigger a violation of FRBP 9011(b).

Moreover, sanctions are not warranted under FRBP 9011(c)(2), which states that "[a] sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Because the Court has already entered judgment in this adversary proceeding and ruled on the Motion to Alter, and because this is Plaintiff's first request for reconsideration, the Court does not find that sanctions are required as a deterrent at this time.

In addition, Defendants did not incur any attorneys' fees or costs responding to the Motion to Alter because Defendants did not oppose that motion. Deutsche Bank was not required to file this Motion, as this Motion was not responsive to the Motion to Alter. In addition, the Court elected to rule on the Motion to Alter without setting the Motion to Alter for hearing. As such, Defendants also did not incur fees or costs appearing at a hearing on the Motion to Alter. Consequently, the Court does not need to impose monetary sanctions to reimburse Defendants for any fees or costs incurred responding to the Motion to Alter. Moreover, Defendants' request for non-monetary sanctions is moot; the Court entered an order on the Motion to Alter rather than

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Steven Mark Rosenberg  
striking the pleading.

Chapter 7

The Court notes that, although some leniency is afforded to *pro se* litigants, *pro se* parties are not immune from sanctions as Plaintiff contends in the Response. *See* Rule 11 Advisory Comm. Notes ("Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations."); *see also In re Marsch*, 36 F.3d 825, 829 (9<sup>th</sup> Cir. 1994) ("Because FRCP 11 and Bankruptcy Rule 9011 use virtually identical language, we often rely on cases interpreting the former when construing the latter."). The Court will take into account Plaintiff's *pro se* status, but Plaintiff cannot use his *pro se* status as a shield should Plaintiff make repetitive or frivolous arguments in the future.

At this time, because Plaintiff is *pro se*, the Motion to Alter is Plaintiff's first motion under Rule 59(e) in this adversary proceeding, Defendants did not incur any fees or costs responding to the Motion to Alter or appearing at a hearing on the Motion to Alter and the Court already ruled on the Motion to Alter, the Court will not impose sanctions against Plaintiff.

### III. CONCLUSION

The Court will deny the Motion.

The Court will prepare the order.

#### Party Information

**Debtor(s):**

Steven Mark Rosenberg

Represented By  
Charles Shamash

**Defendant(s):**

Deutsche Bank National Trust

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Tomas A Ortiz

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Steven Mark Rosenberg**

**Chapter 7**

Ocwen Loan Servicing, Inc

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

Alliance Bancorp, Inc

Represented By  
Marvin B Adviento

Alliance Bancorp Estate Trustee

Pro Se

MERS Mortgage Electronic

Represented By  
Marvin B Adviento  
Lukasz I Wozniak  
T Robert Finlay  
Nicole S Dunn

One West Bank

Pro Se

DOES 1 through 25, inclusive

Pro Se

**Plaintiff(s):**

Steven Mark Rosenberg

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**1:17-12434 Robin DiMaggio**

**Chapter 7**

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

**#14.20** Plaintiff's motion for default judgment

fr. 12/5/18

Docket 60

**Tentative Ruling:**

Continue for the plaintiff to offer supplemental evidence in support of its claims.

**I. BACKGROUND**

On September 12, 2017, Robin DiMaggio ("Defendant") filed a voluntary chapter 7 petition. In his schedule E/F [doc. 9], Defendant listed a debt in the amount of \$20,000 in favor of Forum Entertainment Group, Inc. ("Plaintiff") based on breach of contract. In his schedule H, Defendant listed DiMaggio International, Inc. ("DMI") as a codebtor.

In his schedule I, Defendant indicated that he is unemployed and listed \$0 in monthly income. In his Statement of Financial Affairs ("SOFA"), Defendant indicated that he received \$0 in income in 2017. Defendant also indicated that he received \$20,636 in income in 2016 and \$12,312 in income in 2015.

On December 19, 2017, Plaintiff filed a complaint against Defendant (the "Complaint"), requesting nondischargeability of the debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6) and objecting to Defendant's discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5). In relevant part, the Complaint alleged:

In early February 2012, Plaintiff decided to organize a for-profit music concert and feature a lineup of South Korean and American music artists (the "Concert"). To organize the Concert, Plaintiff's Chief Executive Officer, Calvin Lau, approached his friend, Steve Yu. Around April 2012, Mr. Yu introduced Plaintiff to Defendant, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

principal of DMI. DMI is an alter ego of Defendant.

Defendant represented to Plaintiff that he had all of the entertainment industry contacts necessary to secure talent and produce the Concert; Defendant also represented to Plaintiff that he could personally secure the performances of Will.I.Am and Pitbull. On top of these oral representations, Defendant included these misrepresentations on his website. In May 2012, Defendant presented Plaintiff with a budget sheet that unequivocally stated his ability to secure the musical performances of Will.I.Am and Pitbull, among other discounted rates for production of the Concert.

After receiving the budget sheet and relying on Defendant's representations, Plaintiff entered into an oral agreement to retain DMI's services to secure various performances, including Will.I.Am, Pitbull, The Michael Jackson Band, Don Felder and Miri Ben Ari for the Concert. Throughout the summer of 2012, Defendant provided assurances via emails, in addition to oral confirmations, which Plaintiff relied on to its detriment.

Based on the representations, on May 5, 2012, Plaintiff gave Defendant \$50,000, to be paid to DMI, to secure Will.I.Am as a performer. In addition, on May 8, 2012, Plaintiff gave Defendant another \$50,000, to be paid to DMI, to secure Pitbull as a performer. In June 2012, Plaintiff followed up with Defendant to determine the status of securing the performances. Defendant represented to Plaintiff that he had given the \$100,000 to the artists and was waiting for confirmation.

Defendant then requested additional funds to secure the performance of The Michael Jackson Band. On June 11, 2012, Plaintiff gave DMI a cashier's check in the amount of \$18,000 to be used as a security deposit to secure The Michael Jackson Band for the Concert. On June 29, 2012, relying on Defendant's representation that Will.I.Am and Pitbull had been paid and would be confirmed, Plaintiff made a down payment in the amount of \$15,000 to The Greek Theater to secure a location for the Concert.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

On July 2, 2012, Defendant requested that Plaintiff provide an additional \$13,000 to secure sound engineers for the Concert. Again, Plaintiff inquired about the status of Will.I.Am and Pitbull, and Defendant informed Plaintiff that the deposits had been paid and that confirmations were on their way. Relying on Defendant's representation, Plaintiff gave DMI an additional \$13,000 to be paid to sound engineers. On July 17, 2012, Defendant represented to Plaintiff that DMI needed an advance on its brokering fees for the Concert. Plaintiff again questioned Defendant about Will.I.Am and Pitbull, and Defendant again represented confirmations were on the way; as such, Plaintiff gave DMI \$15,000.

From July 18, 2012 to July 29, 2012, Plaintiff repeatedly tried to contact Defendant regarding the status of confirmations regarding Will.I.Am and Pitbull. However, Defendant became non-responsive and refused to communicate with Plaintiff. Defendant did not inform Plaintiff of his failure to secure the performances of Will.I.Am and Pitbull.

When Plaintiff was able to regain contact with Defendant, Plaintiff again requested confirmations that Will.I.Am and Pitbull would perform. At this time, Defendant admitted to Plaintiff that he could not secure the the artists' performances; that he had never paid the respective \$50,000 deposits to Will.I.Am and Pitbull; that Defendant has instead placed the \$100,000 deposit money for Will.I.Am and Pitbull into his own personal bank account; and that Defendant could not return the \$100,000 because his personal account had been frozen due to his pending divorce.

However, Defendant still represented that he could assist with the Concert; Defendant informed Plaintiff that the Concert should move forward with The Michael Jackson Band and others that had been verbally represented to be confirmed to perform. As such, on October 16, 2012, Plaintiff placed a secondary deposit with The Greek Theater in the amount of \$123,890 to lock the venue for the Concert on

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**  
October 27, 2012.

**Chapter 7**

Because Defendant knew he could not return Plaintiff's deposits, Defendant suggested to Plaintiff that Plaintiff also plan a second concert showcasing Don Felder, Miri Ben Ari, The Michael Jackson Band and others. Defendant agreed to assist Plaintiff in securing artist performances for the second concert. As such, in October 2012, Plaintiff made additional payments to DMI, including: (A) on October 9, 2012, a \$5,000 cashier's check for DMI to secure Don Felder; (B) on October 10, 2012, a \$7,500 cashier's check for DMI to secure Miri Ben Ari; and (C) on October 15, 2012, a \$5,000 cashier's check for a brokering service fee advance to DMI.

Knowing that Plaintiff was desperate to push forward with the Concert, Defendant convinced Plaintiff to pay Defendant \$7,000 for DMI to use to promote the Concert on a radio station. Based on Defendant's representations, in October 2012, Plaintiff also expended an additional \$60,000 on marketing, artist performance fees and costs related to travel, lodging and management of Korean artists slated to perform.

On October 25, 2012, two days before the Concert, Plaintiff realized the Concert could not go forward and, having no other choice, canceled the Concert. None of the performances for which Plaintiff paid DMI took place. From October 2012 until the present, Plaintiff has repeatedly asked Defendant to return the monies paid for artist deposits and/or brokering fees. Defendant has not returned any of the funds to Plaintiff. From April 2012 to October 2012, Plaintiff spent a total of \$661,000 to put on the Concert, and suffered damages in excess of \$2 million based on the Concert being canceled.

In addition, after filing his chapter 7 petition, Defendant failed to list certain assets in his petition. For instance, in his schedule F, Defendant listed that the debt he owed Plaintiff was only \$20,000. In addition, in his SOFA, Defendant did not list any income received from DMI in the last three years. Even if Defendant does not consider the funds converted from Plaintiff as "income," Defendant did not include the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

money in his SOFA as property he is holding for another entity.

Complaint, pp. 2-8. Below its 11 U.S.C. § 523(a)(6) claim, where Plaintiff alleged that Defendant converted Plaintiff's funds with willful and malicious intent, Plaintiff alleges:

Defendant engaged in willful and malicious conduct as well as in the conversion of Plaintiff's assets. Between May 2012 and October 2012, Defendant, while acting as an agent and fiduciary to Plaintiff, made certain representations to Plaintiff about his ability to secure certain musical talent for the Concert which Defendant knew Plaintiff would rely on and would secure him monetary payments. Defendant provided budget sheets, told Plaintiff payments would be paid to musical talents, sound engineers and for brokering fees, when in reality Defendant knew the information to be false and knew his intentional conduct would cause injury to Plaintiff.

During these months, Plaintiff incurred at least \$660,000 in direct damages from Defendant's willful and malicious acts and representations. Defendant took the funds for his own personal gain without disclosure when they were earmarked for third parties. As a direct and proximate result of the above, Plaintiff suffered damages in an amount in excess of \$2 million. Defendant acted willfully, maliciously and with deliberate intent to deceive Plaintiff.

Complaint, p. 11. Plaintiff also attached several emails between Defendant and Plaintiff's representatives to the Complaint, which emails have not been authenticated by a party with personal knowledge.

On August 22, 2018, the Court held a pretrial conference. Defendant did not appear. As a result, on August 28, 2018, the Court entered an Order to Show Cause why Defendant's answer should not be stricken based on his failure to appear (the "OSC") [doc. 49]. On October 17, 2018, Defendant appeared at the hearing on the OSC. At that time, Defendant agreed to the striking of his answer and entry of default against him. Consequently, the Court instructed Plaintiff to file a motion for default judgment to prove up its claims against Defendant.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Robin DiMaggio**

**Chapter 7**

On October 31, 2018, Plaintiff filed the Motion [doc. 60]. To the Motion, Plaintiff attached the Declaration of Sanaz Sarah Berliani (the "Bereliani Declaration"). In the Bereliani Declaration, Ms. Bereliani repeats the allegations in the Complaint as to Plaintiff's claims under 11 U.S.C. § 523. Bereliani Declaration, ¶¶ 4-36.

As to its claims under § 727(a)(2) and (a)(4), Plaintiff asserts that Defendant's discharge should be denied because: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list \$24,000-\$32,000 in yearly income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-debtor in his schedule H. As to its claim under § 727(a)(3), Plaintiff asserts that Defendant's failure to produce discovery to Plaintiff should bar Defendant from obtaining a discharge. Finally, as to its claim under § 727(a)(5), Plaintiff contends that Defendant has failed to account for the funds Plaintiff furnished to Defendant.

## **II. ANALYSIS**

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments. FRCP 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

...(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"Our starting point is the general rule that default judgments are ordinarily disfavored." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). But, "[c]ourts have inherent equitable powers to dismiss actions or enter default judgments for failure to prosecute, contempt of court, or abusive litigation practices." *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987). "The bankruptcy court has broad discretion to grant a default judgment; the plaintiff is not entitled to such judgment as a matter of right." *In re McGee*, 359 B.R. 764, 771 (B.A.P. 9th Cir. 2006). "The trial court's 'broad discretion' over entry of default judgment includes the discretion to require the plaintiff to prove its case with competent, admissible evidence, to assess matters in accordance with substantial justice, and to make reasonable inferences against the plaintiff." *Id.*, at 775.

"[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 pled include allegations that are "made indefinite or erroneous by other allegations in the same complaint, . . . allegations which are contrary to the facts of which the court will take judicial notice, or which are not susceptible to proof by legitimate evidence, or which are contrary to the uncontroverted material in the file of the case." It follows that a default judgment that is based solely on the pleadings may only be granted upon well-pled factual allegations, and only for relief for which a sufficient basis is asserted in a complaint.

*Id.*, at 772. Further, even if the Court takes the plaintiff's facts as true, "the facts alleged in the complaint may be insufficient to establish liability." *Id.*, at 771.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

"The factors to be considered for entry of a default judgment include (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 sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *McGee*, at 771 (*Eitel v. McCool*, 782 F.2d at 1471-72); *see also Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173 (N.D. Cal. 2007). However, "Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *Televideo Systems*, 826 F.2d at 917.

**A. Possibility of Prejudice to the Plaintiff**

Here, given Defendant's lack of cooperation and the Court's striking of Defendant's answer, a default judgment is likely the only avenue to judgment left for Plaintiff. As such, if Plaintiff does not obtain a default judgment, Plaintiff will suffer prejudice.

**B. Merits of the Plaintiffs' Substantive Claims**

Plaintiff requests default judgment as to seven claims: nondischargeability of its debt under 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6) and objection to discharge under 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5).

***1. 11 U.S.C. § 523(a)(2)(A)***

To prevail on a § 523(a)(2)(A) claim, a plaintiff must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

(5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

The only evidence in support of Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) is the Bereliani Declaration. As Ms. Bereliani does not have personal knowledge of the events that transpired between Plaintiff and Defendant, the Bereliani Declaration cannot be used to prove up Plaintiff's claim under § 523(a)(2)(A). In addition, although Plaintiff may rely on the allegations in the Complaint to prove intent, Plaintiff does not allege that Defendant acted with knowledge of the falsity of his statements or with intent to deceive at the time he incurred the debt. Plaintiff does allege that Defendant "acted... with deliberate intent to deceive Plaintiff" under Plaintiff's § 523(a)(6) claim, but does not specify if Defendant acted with intent to deceive at the time Defendant made the alleged misrepresentations to Plaintiff. As such, the allegations do not establish intent for purposes of § 523(a)(2)(A).

As to intent, even if Plaintiff offers a declaration by a percipient witness, that witness likely cannot testify as to Defendant's intent. As such, to obtain relief under § 523(a)(2)(A), Plaintiff would have to move to file an amended complaint.

Finally, the Complaint does not include sufficient allegations regarding whether Defendant's actions caused cancellation of the Concert. The Complaint includes allegations that other artists were set to perform (such as The Michael Jackson Band and unnamed Korean artists), and Don Felder and Miri Ben Ari were allegedly set to perform for a *second* concert. As such, it is not clear why the Concert did not go forward with the other performers. Under FRCP 9(b), which requires specific allegations related to fraud, the allegations are insufficient to establish causation. Consequently, Plaintiff has not proven up its claim under § 523(a)(2)(A).

**2. 11 U.S.C. § 523(a)(4)**

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

*i. Fraud or Defalcation While Acting in a Fiduciary Capacity*

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); see also *In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796. Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796.

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 fn. 6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at fn. 7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

Here, Plaintiff has not alleged that an express, statutory or technical trust existed prior to the events alleged in the Complaint. In *In re Kelley*, 2008 WL 8013409, at \*7 (Bankr. S.D. Cal. Jul. 15, 2008), on which Plaintiff relies, the court found that a fiduciary relationship existed between the debtor (a real estate broker) and the creditor

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

(a client) by operation of California Business & Professions Code § 10145, which creates a statutory trust when clients deposit funds with real estate brokers. Plaintiff has not established that such a statutory trust exists in this case.

**ii. Embezzlement**

"Federal law and not state law controls the definition of embezzlement for purposes of section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S.Ct. 294, 295, 40 L.Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of a nonowner, (2) the nonowner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). For purposes of embezzlement, a fiduciary relationship is not required. *Id.*, at 555.

Once again, the only evidence in support of Plaintiff's § 523(a)(4) claim is the Bereliani Declaration, and Ms. Bereliani does not have personal knowledge of the events that form the basis of Plaintiff's § 523(a)(4) claim. In addition, although the Complaint includes allegations that Defendant misappropriated the \$100,000 given to Defendant for the purpose of securing Will.I.Am and Pitbull (and incurred certain damages as a result of the misappropriation), the Complaint does not include allegations regarding what Defendant did with the funds that were earmarked to secure Don Felder and Miri Ben Ari as performers. For example, Plaintiff does not allege that Defendant did not use the funds to attempt to secure these performers. As such, the Complaint does not establish misappropriation as to the \$17,500 Plaintiff gave to Defendant to secure Don Felder and Miri Ben Ari. A future supplemental declaration by an appropriate witness should include such information.

With respect to "circumstances indicating fraud," because the Complaint does not include intent allegations under § 523(a)(2)(A), Plaintiff has not established fraud itself. However, Plaintiff need not show actual fraud to show "circumstances indicating fraud." In a relatively recent unpublished decision, the BAP, relying on the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

Supreme Court of the United States' decision in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016), found that "circumstances indicating fraud" for purposes of embezzlement is "not synonymous" with an "intent to defraud" as required by § 523(a)(2)(A):

Debtor primarily asserts error because the state court did not make an explicit finding of fraud. We acknowledge this point but find it inapposite. The finding required for a determination of § 523(a)(4) embezzlement is that Debtor's actions indicated fraud. Such a determination is not synonymous with an intent to defraud as required under § 523(a)(2)(A). And even if it were, § 523(a)(2)(A) does not necessarily require a misrepresentation as Debtor argues. Recently in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016), the United States Supreme Court clarified that misrepresentation is not an element of actual fraud under § 523(a)(2)(A). That is, actual fraud may include a wider array of misconduct. The record here sufficiently establishes misconduct that falls within the broader definition of actual fraud and even more plainly meets the § 523(a)(4) requirement of indicia of fraud.

*In re Phillips*, 2016 WL 7383964, at \*5 (B.A.P. 9th Cir. Dec. 16, 2016).

Other courts appear to agree that, unlike § 523(a)(2)(A), the intent to defraud need not be present at the time of the misrepresentation or for the purpose of inducing the creditor to furnish funds. For instance, several courts have held that a debtor's subsequent concealment of misappropriated funds satisfies the "circumstances indicating fraud" element of embezzlement. *See In re Hatch*, 465 B.R. 479, 487 (Bankr. W.D. Mich. 2012) ("Because embezzlement, by definition, involves a situation in which the debtor initially has lawful possession of the property at issue, it is not necessary for a creditor to prove that a debtor's misrepresentations induced it to part with property. Rather, the creditor needs only to prove misappropriation and 'circumstances indicating fraud,' such as circumstances suggesting that the debtor intended to conceal the misappropriation.").

Here, Plaintiff does allege in the Complaint that Defendant concealed the misappropriation. In paragraphs 14 through 20, Plaintiff alleges that it repeatedly

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

asked Defendant about whether Will.I.Am and Pitbull had sent confirmations, and Defendant repeatedly represented that the artists had been paid and that Defendant was awaiting final confirmation. Because Plaintiff alleges that Defendant continued to conceal the misappropriation, the Complaint includes sufficient allegations as to "circumstances indicating fraud." As such, if an appropriate witness provides a declaration substantiating these allegations, Plaintiff will likely be able to show "circumstances indicating fraud."

**3. 11 U.S.C. § 523(a)(6)**

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 977 (1998). Thus, debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.*, 523 U.S. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145-46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("the willful injury requirement of § 523(a)(6) is met when it is shown either that debtor had *subjective* motive to inflict injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct") (emphasis in original).

Under § 523(a)(6), the injury must *also* be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.*, at 1147. Maliciousness does not require "personal hatred, spite, or will-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Here, the Complaint does include allegations that Defendant acted "willfully" and "maliciously" in allegedly converting Plaintiff's funds. However, Plaintiff bases its claim under § 523(a)(6) on conversion, and the Complaint does not sufficiently establish conversion.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

Under California law, "[t]o maintain a conversion action, '[a plaintiff] must show that she was entitled to immediate possession at the time of conversion.'" *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999) (quoting *Bastanchury v. Times-Mirror Co.*, 68 Cal.App.2d 217, 236 (Ct. App. 1945)). Here, Plaintiff was not entitled to immediate possession of the funds at the time Defendant misappropriated the funds; rather, the funds were to be paid to artists to secure their performances. As such, the Complaint does not establish conversion.

**4. 11 U.S.C. § 727(a)(2)**

Section 727(a)(2)(A)-(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor...." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *In re Adeb*, 787 F.2d 1339, 1343 (9th Cir.1986) (quoting *Devers*, 759 F.2d at 753-54).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *see also In re Zhang*, 463 B.R. 66, 78 (Bankr. S.D. Ohio 2012).

Plaintiff asserts that Defendant's discharge should be denied based on the following acts of concealment: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list \$24,000-\$32,000 in yearly income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**  
debtor in his schedule H.

Chapter 7

As to Defendant listing a \$20,000 debt owed to Plaintiff as opposed to a larger sum, understating a debt does not constitute concealment of property. This type of inaccuracy in a debtor's schedules is better addressed by 11 U.S.C. § 727(a)(4), discussed below. The same is true regarding scheduling of Defendant's ex-wife as a co-debtor.

Regarding the funds taken from Plaintiff, misappropriated funds would not qualify as property of Defendant or property of the estate, and, as a result, would not come within the purview of § 727(a)(2)(A) or (B). Embezzled money does not qualify as earned income. *See, e.g. In re Wada*, 210 B.R. 572, 576-77 (B.A.P. 9th Cir. 1997).

To the extent Defendant did not disclose income from SESAC in his schedules or statements, such a failure to disclose would qualify as concealment for purposes of § 727(a)(2)(A) and (B). However, Plaintiff has offered no evidence that Defendant in fact received any income from SESAC during the relevant time periods prescribed by § 727(a)(2)(A) and (B). Although the Complaint sufficiently alleges the intent element of these statutes, i.e., that Defendant acted within intent to hinder, delay or defraud, and Plaintiff need not offer further evidence of intent, Plaintiff should supplement the Motion with evidence that Defendant received income from SESAC.

**5. 11 U.S.C. § 727(a)(3)**

Section 727(a)(3) places an affirmative duty on the debtor to keep and preserve records accurately documenting his or her business and personal affairs. *See In re Caneva*, 550 F.3d 755, 762 (9th Cir. 2008). Requiring accurate documentation "removes the risk to creditors of 'the withholding or concealment of assets by the bankrupt under cover of a chaotic or incomplete set of books or records.'" *Id.* (quoting *Burchett v. Myers*, 202 F.2d 920, 926 (9th Cir. 1953)). We strictly construe this exception to discharge in favor of the debtor's fresh start. *Id.*

To succeed on its objection to discharge under § 727(a)(3), Plaintiffs must show "(1) that [Defendant] failed to maintain and preserve adequate records, and (2) that such failure rendered it impossible to ascertain [Defendant's] financial condition and material business transactions." *In re Cox*, 41 F.3d 1294, 1296 (9th Cir. 1994) (quoting *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir. 1992)). Generally,

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT...

**Robin DiMaggio**

**Chapter 7**

records are sufficient if they allow the court and creditors to trace the debtor's financial dealings. *In re Ridley*, 115 B.R. 731, 733 (Bankr. D. Mass. 1990).

Here, Plaintiff's claim under § 727(a)(3) is based on Defendant's failure to produce discovery. That Defendant did not cooperate with Plaintiff does not translate to Defendant failed to maintain or preserve those records. In addition, there is no evidence that Defendant "rendered it impossible" to ascertain Defendant's financial condition. Although Defendant may have failed to produce documents to Plaintiff, Plaintiff could have subpoenaed Defendant's banks to gather information about Defendant's financial picture. As such, Plaintiff has not established a claim under 11 U.S.C. § 727(a)(3).

**6. 11 U.S.C. § 727(a)(4)**

Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" made a false oath or account in the course of the bankruptcy proceedings. To bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A] false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th Cir. 2007).

"A fact is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010) (quoting *Khalil*, 379 B.R. at 173). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (quoting *Khalil*, 379 B.R. at 173) (internal quotation omitted).

The fraud provision of § 727(a)(4) is similar to common law fraud, which the Ninth Circuit Court of Appeals has described as follows:

The creditor must show that (1) the debtor made the representations;  
(2) that at the time he knew they were false; (3) that he made them with



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 12, 2018**

**Hearing Room 301**

2:30 PM

**CONT...**

**Robin DiMaggio**

**Chapter 7**

the intention and purpose of deceiving the creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

*Roberts*, 331 B.R. at 884. Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011).

As with § 727(a)(2), Plaintiff asserts that Defendant's discharge should be denied based on the following: (A) Defendant understated the amount of debt owed to Plaintiff by listing a debt for \$20,000 in his schedule E/F; (B) Defendant did not include the misappropriated funds in his schedules or statements; (C) Defendant did not list income from the Canadian association "SESAC" in his schedules or statements; and (D) Defendant did not schedule his ex-wife as a co-debtor in his schedule H.

Here, there is no admissible declaration regarding the amount of funds allegedly misappropriated by Defendant. However, if Plaintiff were to supplement the Motion with an admissible declaration by someone with personal knowledge, and if that declaration substantiated the Complaint's allegations regarding the amount of misappropriated funds, that amount would be significantly greater than the \$20,000 debt listed by Defendant in his schedule E/F. As such, upon receipt of an admissible declaration, Plaintiff would be able to show that Defendant made a false oath. In addition, the false oath would be material because it would bear a relationship to Defendant's estate; by understating his liabilities, Defendant did not provide the trustee, the Court and creditors with an accurate picture of his estate.

As to the alleged income from SESAC, once again, Plaintiff has not provided evidence that Defendant received such income, or when Defendant received the alleged income. If Defendant was receiving income from SESAC as of the petition date or within the three years preceding the petition date, then Defendant made a false oath when he stated in his schedules and SOFA that he received no income in 2017.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... **Robin DiMaggio**

**Chapter 7**

In addition, the false oath would be material because it bears a relationship to assets of Defendant's estate.

In the Complaint, Plaintiff alleges that Defendant made false oaths and omissions "knowingly" and "fraudulently." As such, if Plaintiff provides sufficient evidence of the false oaths, Plaintiff may be able to obtain default judgment under § 727(a)(4).

Regarding Plaintiff's allegation that Defendant did not include the funds furnished by Plaintiff as income, as noted above, misappropriated funds do not qualify as "income." In addition, Plaintiff has not explained why the omission of Defendant's ex-wife as a codebtor is a material omission. Consequently, Plaintiff has not established a claim under § 727(a)(4) as to these omissions.

**7. 11 U.S.C. § 727(a)(5)**

Pursuant to 11 U.S.C. § 727(a)(5), a debtor's discharge will be denied if "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." Under § 727(a)(5), the objecting party must demonstrate that:

- (1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

*In re Retz*, 606 F.3d 1189, 1205 (9th Cir. 2010).

Here, Plaintiff bases its claim under § 727(a)(5) on the fact that Defendant has not accounted for the funds Plaintiff gave to DMI. However, under § 727(a)(5), courts may deny a debtor's discharge if the debtor has failed to satisfactorily explain a loss of assets. Because Plaintiff is alleging that Defendant embezzled the funds provided by Plaintiff, the embezzled funds would not be "assets" of the bankruptcy estate. As such, Plaintiff has not established a claim under § 727(a)(5).

**C. Sufficiency of the Complaint**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

"The second and third [*Eitel*] factors, taken together, require that [Plaintiffs] assert a claim upon which [they] may recover." *In re Sharma*, 2013 WL 1987351, at \*10 (B.A.P. 9th Cir. May 14, 2013), *aff'd*, 607 F. App'x 713 (9th Cir. 2015), *citing IO Group*, 708 F.Supp.2d 989, 997 (N.D. Cal. 2010). "For default judgment based solely on the complaint, without the benefit of a prove-up hearing, the facts in the complaint must go beyond being well-pled; they must support the ultimate determination of liability." *Sharma*, 2013 WL 1987351 at \*10.

For the reasons stated above, the Complaint did not sufficiently allege claims under 11 U.S.C. § 523(a)(2)(A) or (a)(6), or under 11 U.S.C. § 727(a)(3) or (a)(5). The Complaint does make sufficient allegations as to embezzlement under 11 U.S.C. § 523(a)(4) (but not as to fraud or defalcation while acting in a fiduciary capacity) and as to the omission of certain assets or liabilities under 11 U.S.C. § 727(a)(2) and (a)(4).

**D. The Sum of Money at Stake in the 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. Security Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002). In the Complaint, Plaintiff requests damages in excess of \$2 million.

**E. Possibility of Dispute**

"The fifth *Eitel* factor considers the possibility of dispute as to any material facts in the case." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*4 (C.D. Cal. Feb. 13, 2004). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *TeleVideo Systems*, at 917-918 (quoting *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir.1977)).

Here, Defendant agreed to the striking of his answer and to Plaintiff proceeding by way of default judgment. As such, there is not a significant possibility of dispute.

**F. Possibility of Excusable Neglect**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 12, 2018

Hearing Room 301

2:30 PM

CONT... Robin DiMaggio

Chapter 7

"Due process requires that all interested parties be given notice reasonably calculated to apprise them of the pendency of the action and be afforded an opportunity to present their objections before a final judgment is rendered." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, \*5 (C.D. Cal. Feb. 13, 2004) (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950)).

Because this is a situation where Defendant's answer was stricken, and Defendant is aware that default judgment may be entered against him, the general due process concerns are not present here.

### III. CONCLUSION

The Court will continue this hearing to **1:30 p.m. on February 6, 2019**. No later than **January 23, 2019**, Plaintiff must file a supplemental declaration by a witness with personal knowledge as to Plaintiff's claims under § 523. If the supplemental declaration cures the deficiencies outlined above, the Court may enter default judgment under § 523. As to Plaintiff's claims under § 727(a)(2) and (a)(4), if Plaintiff provides evidence of income received by SESAC within the relevant time periods, and if Plaintiff proves that Defendant misappropriated a sum greater than \$20,000, the Court also may enter default judgment under § 727(a)(2) and (a)(4).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robin DiMaggio

Represented By  
Moises S Bardavid

**Defendant(s):**

Robin DiMaggio

Pro Se

**Plaintiff(s):**

Forum Entertainment Group, Inc.

Represented By  
Sanaz S Bereliani

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-11024 Kevin C. Polito and April Dawn Underwood**

**Chapter 11**

**#1.00** Status conference re chapter 11 case

fr. 6/8/17, 10/5/17; 10/19/17 (stip); 11/16/17(stip); 12/14/17;  
1/11/18; 4/12/18; 6/14/18

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order closing case on interim basis entered  
11/27/18.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kevin C. Polito

Represented By  
Matthew D Resnik

**Joint Debtor(s):**

April Dawn Underwood

Represented By  
Matthew D Resnik

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#2.00** Confirmation hearing re: Individual Debtors Second Amended  
Modified Chapter 11 Plan Of Reorganization

Docket 105

**\*\*\* VACATED \*\*\* REASON: Order entered 12/7/18 continuing hearing to  
2/7/19 at 1:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan**

**Chapter 11**

**#3.00** Status conference re: chapter 11 case

fr. 10/19/17; 3/15/18; 6/14/18; 9/13/18; 10/18/18; 11/1/18;

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered 12/7/18 continuing hearing to  
2/7/19 at 1:00 PM.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Yegiya Kutyan

Represented By  
Sheila Esmaili

**Joint Debtor(s):**

Haykush Helen Kutyan

Represented By  
Sheila Esmaili

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#4.00** Order to Show Cause Why This Case Should Not Be Dismissed With a 180-Day Bar for Failure to Comply With Court's Order

Docket 56

**Tentative Ruling:**

The Court will dismiss this case with a 180-day bar pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(E), (F) and (J). The Court also will sanction Dana Douglas \$250.00.

**I. BACKGROUND**

On February 21, 2018, Cheryl Placencia ("Debtor") filed a voluntary chapter 11 petition. Previously, Debtor had filed six other bankruptcy cases, including chapter 11 cases Debtor filed in 2016 (the "2016 Case") [1:16-bk-12629-VK] and in 2017 (the "2017 Case") [1:17-bk-11847-VK]. The Court dismissed the 2016 Case based on Debtor's inability to explain distributions listed in her monthly operating reports [1:16-bk-12629-VK, docs. 37, 46]. The Court dismissed the 2017 Case based on Debtor's failure to provide evidence of insurance coverage for her vehicles and failure to file monthly operating reports [1:17-bk-11847-VK, docs. 48, 57].

In Debtor's schedule A/B, Debtor listed an interest in real property located at 11922 Louise Avenue, Granada Hills, CA 91344 (the "Property") and valued the Property at \$950,000. In her schedule C, Debtor claimed an exemption in the Property in the amount of \$100. In her schedule D, Debtor listed a \$1,350,000 deed of trust against the Property in favor of Nationstar Mortgage. In her schedule A/B, Debtor also listed personal property valued at \$50,378. In her schedule C, Debtor claimed as exempt \$26,578 of her personal property. In her schedule D, Debtor listed \$6,195 in encumbrances against her personal property.

During the pendency of the 2017 Case, Dana M. Douglas represented Debtor as Debtor's general bankruptcy counsel. Ms. Douglas also is Debtor's general bankruptcy counsel in Debtor's current bankruptcy case.



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Cheryl Placencia**

**Chapter 11**

On May 16, 2018, the Court entered an order setting September 17, 2018 as the deadline for Debtor to file a proposed chapter 11 plan and related disclosure statement [doc. 41]. On September 24, 2018, Debtor belatedly moved to extend the deadline for Debtor to file a proposed chapter 11 plan and related disclosure statement (the "Motion to Extend") [doc. 50]. In a status report [doc. 49] filed concurrently with the Motion to Extend, Debtor stated that she is attempting to obtain a consensual loan modification with her mortgage lender.

On September 26, 2018, the Court entered an order extending the deadline for Debtor to file a proposed chapter 11 plan and related disclosure statement to October 27, 2018 [doc. 51]. On October 4, 2018, the Court issued a ruling continuing the status conference to November 1, 2018 and instructing Debtor that, if Debtor does not timely file a proposed chapter 11 plan and related disclosure statement by October 17, 2018, Debtor must file a status report no later than October 18, 2018.

Debtor did not timely file a proposed chapter 11 plan or related disclosure statement. In addition, Debtor did not file a chapter 11 case status conference report prior to the continued status conference.

On November 1, 2018, the Court held a continued status conference. Debtor appeared. At that time, the Court informed Debtor that the Court would provide Debtor an opportunity to participate in the Court's Loan Modification Management Pilot Program ("LMM"). The Court noted in a ruling that, if Debtor did not timely comply with LMM procedure or, in the alternative, file a proposed chapter 11 plan and related disclosure, the Court would not provide any further extensions and would dismiss this case.

On November 6, 2018, the Court issued the OSC [doc. 56]. In the OSC, the Court ordered Debtor to file a Motion to Commence LMM and a status report no later than December 6, 2018. The Court also ordered that, if Debtor elected not to proceed via the LMM, that Debtor must file a proposed chapter 11 plan and related disclosure statement no later than December 6, 2018. The Court stated that, "if Debtor does not comply timely with this Order to Show Cause, the Court may dismiss this case with a 180-day bar and may impose a sanction of \$250 against Ms. Douglas in accordance with 11 U.S.C. § 105(a) and the Court's inherent authority." OSC, p. 3.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**CONT... Cheryl Placencia**

**Chapter 11**

As of December 10, 2018, Debtor has not filed a Motion to Commence LMM, a status report or a proposed chapter 11 plan and related disclosure statement. In addition, Debtor has not timely filed a monthly operating report for October 2018.

**II. ANALYSIS**

Pursuant to 11 U.S.C. § 1112(b)—

(b) (1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, 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, if the movant establishes cause. . . .

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that -

(A) there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph 4(A) -

(i) for which there exists a reasonable justification

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

CONT...

**Cheryl Placencia**

**Chapter 11**

for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

...

(4) For purposes of this subsection, the term ‘cause’ includes . . .

...

(E) failure to comply with an order of the court;

(F) 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;

...

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court....

11 U.S.C. § 1112(b). Motions to dismiss under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is ‘cause’ to act. Second, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006).

Here, Debtor did not timely file a Motion to Commence LMM and did not timely file a status report as ordered by the Court in the OSC. In the alternative, Debtor did not timely file a proposed chapter 11 plan or related disclosure statement. Debtor also did not timely file the monthly operating report for October 2018. As such, there is cause to dismiss this case.

Although there is some equity in Debtor’s personal property, in the amount of

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**CONT...**

**Cheryl Placencia**

**Chapter 11**

\$17,605, any cost of liquidation of such personal property, along with administrative claims against the estate, would not leave any funds for distribution to creditors. Consequently, dismissal is in the best interest of creditors in this case. Because this is Debtor's third bankruptcy filing in three years, and seventh bankruptcy filing overall, the Court will dismiss this case with a 180-day bar to refile a bankruptcy petition.

The Court also will sanction Ms. Douglas, Debtor's general bankruptcy attorney, for failing to comply with the OSC. Pursuant to 11 U.S.C. § 105(a), the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out provisions of this title," and take "any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

Here, Ms. Douglas has not complied with any of the deadlines set by the Court despite the Court providing Ms. Douglas several opportunities to do so. At the last status conference and in the OSC, the Court warned Ms. Douglas that another failure to comply with an order of this Court may result in sanctions in the amount of \$250. Nevertheless, Ms. Douglas has not timely filed any of the required documents with the Court. Consequently, the Court will sanction Ms. Douglas \$250.

### **III. CONCLUSION**

The Court will dismiss this case with a 180-day bar. The Court also will sanction Ms. Douglas \$250, to be paid to the Clerk of the Court within **14 days** of entry of the order dismissing this case.

The Court will prepare the order.

<b>Party Information</b>
--------------------------

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Cheryl Placencia**

**Chapter 11**

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:18-10459 Cheryl Placencia**

**Chapter 11**

**#5.00** Status conference re: chapter 11 case

fr. 4/12/18; 5/10/18; 10/4/18; 11/1/18;

Docket 1

**Tentative Ruling:**

*See* calendar no. 4.

**11/1/2018 Tentative:**

Contrary to the Court's order extending the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement to October 17, 2018 [doc. 51], the debtor has not timely filed a proposed chapter 11 plan or related disclosure statement. Moreover, contrary to the Court's instructions from the prior status conference, the debtor did not timely file a status report explaining why the debtor has not timely filed a proposed chapter 11 plan or related disclosure statement. In addition, the debtor did not timely file a monthly operating report for September 2018.

Assuming the debtor becomes current with her monthly operating reports, and if the debtor's main barrier to reorganization is the debtor's inability to obtain a loan modification, the Court will provide an opportunity for the debtor to participate in the Loan Modification Management Pilot Program ("LMM"). The LMM forms and procedures may be found on the Court's website at [www.cacb.uscourts.gov/loan-modification-management-pilot-program](http://www.cacb.uscourts.gov/loan-modification-management-pilot-program)

If the debtor chooses to participate, the Court will set a deadline by which the debtor must file a Motion to Commence LMM using Form LMM 4001-1.6.MOTION.COMMENCE and otherwise must comply with the procedures outlined on the Court's website. Alternatively, the debtor must file a chapter 11 plan and disclosure statement. If the debtor does neither, the Court will not provide any further extensions and will dismiss this case.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Cheryl Placencia**

**Chapter 11**

**Debtor(s):**

Cheryl Placencia

Represented By  
Dana M Douglas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11125 Marcelo Martinez**

**Chapter 11**

**#6.00** Status conference re chapter 11 case

fr. 6/21/18; 10/11/18; 11/15/18

Docket 1

**Tentative Ruling:**

Having assessed the status report and declaration filed on November 29, 2018 [doc. 71], the Court will extend the deadline for the debtor to file a chapter 11 plan and related disclosure statement to **January 7, 2019**.

The Court will continue this status conference to January 17, 2019 at 1:00 p.m.

Appearances on December 12, 2018 are excused.

**Party Information**

**Debtor(s):**

Marcelo Martinez

Represented By  
Matthew D Resnik



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#7.00** Motion for order approving individual debtor's disclosure statement in support of debtor's plan of reorganization

Docket 53

**Tentative Ruling:**

Proposed dates and deadlines regarding "Debtor's Chapter 11 Original Plan" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Disclosure Statement Describing Original Chapter 11 Plan:"

Hearing on confirmation of the Plan: **February 7, 2019 at 1:00 p.m.**

Deadline for the debtor to mail the approved disclosure statement, the Plan, ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor: **December 21, 2019.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors, and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **January 18, 2019.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **January 28, 2019.**

Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

---

1:00 PM

**CONT... Rowena Benito Macedo**

**Chapter 11**

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

1:00 PM

**1:18-11181 Rowena Benito Macedo**

**Chapter 11**

**#8.00** Status conference re: chapter 11 case  
fr. 6/21/18; 10/18/18; 11/1/18;

Docket 1

**Tentative Ruling:**

Is the debtor current on the payment of fees to the United States Trustee?

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rowena Benito Macedo

Represented By  
Onyinye N Anyama

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

2:00 PM

**1:11-18591 NOOR NORRIS and HELY NORRIS**

**Chapter 7**

**#9.00** Motion for Order Authorizing Sale of Certain Assets of the  
Estate Pursuant to 11 U.S.C. § 363

Docket 512

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

NOOR NORRIS

Represented By  
Dennis E McGoldrick

**Joint Debtor(s):**

HELY NORRIS

Represented By  
Dennis E McGoldrick

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
Reed Bernet  
Brad S Sures

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12002 Jessica Elisabeth Watson**

**Chapter 7**

**#10.00** Order to show cause for dismissal for non-payment of installment filing fees

Docket 15

**Tentative Ruling:**

Pursuant to Federal Rule of Bankruptcy Procedure 1006(b) and Local Bankruptcy Rule 1006-1(a)(6), the Court will dismiss this case based on the debtor's failure to make installment payments.

The Court will prepare the order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jessica Elisabeth Watson

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 13, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12044 Christopher John Krufal**

**Chapter 7**

**#11.00 Debtor's Motion to Convert Case From Chapter 7 to 13**

Docket 19

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed 11/30/18.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christopher John Krufal

Represented By  
Louis J Esbin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 18, 2018**

**Hearing Room 301**

---

8:30 AM

**1:18-12041 Ramon Castaneda**

**Chapter 7**

**#1.00** Reaffirmation agreement between Debtor and  
Bank of America, N.A.

Docket 16

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ramon Castaneda

Pro Se

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Tuesday, December 18, 2018**

**Hearing Room 301**

8:30 AM

**1:18-12060 Santa M Juarez and Salomon V Dionicio**

**Chapter 7**

**#2.00** Reaffirmation agreement between Debtor and  
Snap-on Credit LLC

Docket 14

**Party Information**

**Debtor(s):**

Santa M Juarez

Represented By  
Bernal P Ojeda

**Joint Debtor(s):**

Salomon V Dionicio

Represented By  
Bernal P Ojeda

**Trustee(s):**

Diane C Weil (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**1:18-11900 Maryam Hadizadeh**

**Chapter 7**

**#1.00** Motion for relief from stay [AN]

MONA SOLEIMANI AND DANNY PAVEHZADEH  
VS  
DEBTOR

fr. 10/10/18; 10/17/18; 11/21/18; 11/17/18

Docket 15

**Tentative Ruling:**

At the previous hearing on the motion, the parties expressed that they were close to a settlement. What is the status of the parties' participation in settlement discussions?

The Court instructed the movants' attorney to file a declaration by December 12, 2018, regarding when the state court could again try the issue (because the previously-set, December 7 trial date was not workable, for the chapter 7 trustee). Although the movants' attorney did not file a declaration, movants' reply brief represents that the state court has set the trial for February 21, 2018 [doc. 58, p. 2].

On December 13, 2018, the chapter 7 trustee filed an application to employ Goldie Schon as special litigation counsel [doc. 59]. Ms. Schon is a Certified Family Law Specialist and has "over 19 years of experience in all aspects of family law related matters." Doc. 59, Declaration of Goldie Schon. Ms. Schon states that her firm has "handled hundreds of divorce cases and routinely handle[s] complex divorce litigation, including, but not limited to, divorce cases involving substantial and complex issues that exist in this case." Doc. 59, Exh. 1.

On December 5, 2018, the chapter 7 trustee filed a supplemental opposition to the motion (the "Supplemental Opposition") [doc 50]. In the Supplemental Opposition, the chapter 7 trustee argues that the debtor and Danny Pavehzadeh (who also refers to himself as Houshang Pavehzadeh) have a 50% community property interest in the real property at issue and that granting relief from stay would interfere with the Court's exclusive jurisdiction.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

CONT...

**Maryam Hadizadeh**

**Chapter 7**

However, that misses the point of the relief from stay motion, *i.e.* to adjudicate the nature of the interests of the debtor and Danny Pavehzadeh in the real property, ***as of the petition date, i.e., July 28, 2018.*** This is an issue of California - *not* bankruptcy - law. The character and percentage of all interests in the real property at issue, ***as of the petition date,*** must be assessed, *e.g.*, in order to allocate and distribute properly any proceeds from the sale of the property in accordance with 11 U.S.C. § 726(c).

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum 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 as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and 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 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 interest of judicial economy and the expeditious and economical determination of litigation for the parties.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

CONT...

**Maryam Hadizadeh**

**Chapter 7**

- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also In re Sonnax Industries, Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990) (listing factors).

Having assessed the relevant factors, there is cause to grant the motion to enable the state court to adjudicate the validity of the quitclaim deed and the characterization of the interests of the debtor and Danny Pavehzadeh in the property, *as of the petition date*. When applied to the pending Motion, the following factors under *Curtis* support granting relief from the automatic stay, for this specific purpose: (1) there is a specialized tribunal *i.e.* the family law court, that is particularly qualified to assess the character of the parties' interests in the real property, under family law and other state law; (2) the action involves third parties; (3) the litigation in the state court would not prejudice the interests of other creditors; (4) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (5) the foreign proceeding has progressed to the point where the parties are prepared for trial; and (6) the impact of the stay on the parties and the "balance of the hurt" on the estate.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maryam Hadizadeh

Represented By  
Stella A Havkin

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10982 Gabriel Medina**

**Chapter 13**

**#2.00** Motion for relief from stay [RP]

STRUNZO DEVELOPMENT CORPORATION  
VS  
DEBTOR

fr. 10/10/18; 11/21/18(stip)

Docket 66

**\*\*\* VACATED \*\*\* REASON: Notice of withdrawal filed 12/14/18 [Dkt. 89]**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gabriel Medina

Represented By  
Anthony Obehi Egbase  
Sedoo Manu

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

1:18-12541 Caridad Salas Hileman

Chapter 13

#3.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 11/14/18

Docket 12

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Caridad Salas Hileman

Represented By  
Ryan A. Stubbe

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 303 Calendar**

Wednesday, December 19, 2018

Hearing Room 303

9:30 AM

**1:18-12606 Marcelo Alejandro Cabrera**

**Chapter 13**

**#4.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 11/21/18

Docket 9

**Tentative Ruling:**

The Court will grant the motion on an interim basis, through January 16, 2019, and continue the hearing to **9:30 a.m. on January 16, 2019**. On or before January 9, 2019, the debtor must file a declaration demonstrating that he has made his chapter 13 plan payments for November and December 2018 and his November and December 2018 deed of trust payments regarding his residence.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Marcelo Alejandro Cabrera

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

1:18-11342 Victory Entertainment Inc

Chapter 7

#5.00 Motion for Relief from Stay [AN]

SALAZAR CLASS ACTION PLAINTIFF AND COUNSEL  
VS  
DEBTOR

Docket 138

\*\*\* VACATED \*\*\* REASON: Notice of withdrawal filed 12/11/18  
[Dkt.146]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victory Entertainment Inc

Represented By  
George J Paukert  
Lewis R Landau

**Trustee(s):**

Howard M Ehrenberg (TR)

Represented By  
Elissa Miller

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

1:18-12752 Victor Velasquez and Jovita Velasquez

Chapter 7

#6.00 Motion for relief from stay [PP]

MERCEDES-BENZ FINANCIAL SERVICES USA LLC  
VS  
DEBTOR

Docket 11

\*\*\* VACATED \*\*\* REASON: Notice of withdrawal filed 12/17/18

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Victor Velasquez

Represented By  
Raymond Perez

**Joint Debtor(s):**

Jovita Velasquez

Represented By  
Raymond Perez

**Movant(s):**

Mercedes-Benz Financial Services

Represented By  
John H Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

1:18-12566 Wayne Holloway

Chapter 7

#7.00 Motion for relief from stay [RP]

WILMINGTON TRUST, N.A.  
VS  
DEBTOR

Docket 19

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Wayne Holloway

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Wayne Holloway**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

1:18-12566 Wayne Holloway

Chapter 7

#8.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 21

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Wayne Holloway**

**Chapter 7**

**Debtor(s):**

Wayne Holloway

Pro Se

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**1:18-10329 Ali P Dargah and Jeff Dargah**

**Chapter 13**

**#9.00** Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC  
VS  
DEBTOR

Docket 44

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ali P Dargah

Represented By  
Matthew D. Resnik

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**1:18-12806 Kathleen Magdaleno**

**Chapter 13**

**#10.00** Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 12

**Tentative Ruling:**

Grant motion on an interim basis and continue hearing to **January 23, 2019 at 9:30 a.m.**

***The First Bankruptcy Case***

On October 10, 2017, the debtor filed a prior chapter 13 petition [case no. 1:17-bk-12718-VK]. In her prior schedules, the debtor disclosed monthly income in the amount of \$4,173.00 and monthly expenses in the amount of \$2,979.00, leaving net monthly income of \$1,194.00. (Case no. 1:17-bk-12718-VK, doc. 20, at p. 3.) The debtor stated that she was employed in landscaping for one year.

On December 20, 2017, the Court entered an order confirming the debtor's amended chapter 13 plan. (Case no. 1:17-bk-12718-VK, doc. 24.) In her prior plan, the debtor's plan payment was \$853.00 per month for 3 months, then \$1,190.58 per month for 29 months, then \$1,392.85 per month for 28 months. (Case no. 1:17-bk-12718-VK, doc. 18.) Through her chapter 13 plan payments, among other things, the debtor intended to cure prepetition deed of trust arrearages in the amount of \$42,000.00.

On April 4, 2018, the debtor filed a motion to modify or suspend plan payments because the debtor stated that she was experiencing a short term financial hardship (the "Motion to Modify"). (Case no. 1:17-bk-12718-VK, doc. 31.) On July 19, 2018, the Court entered an order approving the Motion to Modify. (Case no. 1:17-bk-12718-VK, doc. 35.)

On June 11, 2018, the chapter 13 trustee (the "Trustee") filed a motion to dismiss for failure to make plan payments (the "Motion to Dismiss"). (Case no. 1:17-bk-12718-VK, doc. 34.) The debtor did not oppose the Motion to Dismiss. On November 13, 2018, the Court entered an order dismissing the chapter 13 case for failure to make

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**CONT... Kathleen Magdaleno**

**Chapter 13**

plan payments. (Case no. 1:17-bk-12718-VK, doc. 45.)

***The Pending Bankruptcy Case***

On November 19, 2018, the debtor filed the pending chapter 13 case. On November 27, 2018, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 12]. In the Motion to Continue Stay, the debtor states that she experienced a temporary financial hardship when her contributor income stopped. The debtor states that she has started working a second job in order to make her chapter 13 plan payments. The debtor did not serve the Motion to Continue on all creditors. [FN1].

In her pending case, the debtor's Schedules I and J indicate monthly income of \$3,547.00 and monthly expenses of \$2,899.00, leaving net monthly income of \$675.00. (Doc.14, at pp. 25–28.) Although the Motion to Continue represents that the debtor is working two jobs, the debtor indicated on her Schedule I that she is not employed. (Doc.14, at pp. 25.)

In her chapter 13 plan, the debtor proposes a monthly payment of \$675.00 per month for months 1 through 6, then \$986.66 per month for months 7 through 60. (Doc. 17, at p. 2.)

Although the debtor's plan filed in her prior chapter 13 case set forth higher deed of trust arrear, the debtor's current chapter 13 plan proposes to cure deed of trust arrear in the lesser amount of \$30,000.00. Moreover, on December 10, 2018, the secured creditor JPMC Specialty Mortgage LLC filed an objection to confirmation, contending that the arrear owed are in the amount of \$45,327.64 [doc. 20].

***Discussion***

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed. Under 11 U.S.C. 362(c)(3)(C)(i)(III), a case is presumptively filed not in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a chapter 7

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

CONT... Kathleen Magdaleno

Chapter 13

discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion to Continue Stay and the lack of an opposition to her motion, the debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since her prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. The debtor has made inconsistent statements regarding her employment. Further, the debtor has provided no evidence that she has sufficient net monthly income to fund the step-up in her proposed chapter 13 plan. Finally, even if the debtor has sufficient monthly income to fund the plan, it appears that the plan does not cure all arrears on the debtor's primary residence.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than December 27, 2018**, the debtor must file and serve notice of the continued hearing on *all* creditors in accordance with Fed. R. Bankr. P. 7004(b)(3) and (h). The debtor must timely pay: (1) her December 2018 and January 2019 deed of trust payments in the amount of \$1,474.00 (as stated in her current Schedule J) as to the real property located at 7107 Cozycroft Avenue, Winnetka, California 91306; and (2) her December 2018 plan payment in the amount of \$675.00 to the chapter 13 trustee. **No later than January 17, 2018**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust and chapter 13 plan payments.

**FOOTNOTES**

1. The debtor attached a proof of service to the Motion to Continue. However, with the exception of Midland Funding, the entities served do not appear on the debtor's list of creditors or in her Schedules D and E/F. Further, the debtor did not serve secured creditors Chase Mtg and Santandar dba Chrysler Capital.

**Party Information**

**Debtor(s):**

Kathleen Magdaleno

Represented By  
Joshua L Sternberg



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

---

9:30 AM

**CONT... Kathleen Magdaleno**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**1:15-10931 James Tomas and Imelda Tomas**

**Chapter 13**

**#11.00** Opposition to declaration re default under adequate protection

Docket 78

**Tentative Ruling:**

On March 18, 2015, the debtors filed a chapter 13 petition. On January 22, 2018, the Bank of New York Mellon ("Creditor") filed a motion for relief from the automatic stay as to the real property located at 9341 Farralone Avenue, Chatsworth Area, Los Angeles 91311 (the "Property") [doc. 48]. On February 12, 2018, Creditor and the debtors filed a stipulation for adequate protection as to the Property (the "Stipulation") [doc. 51]. On February 14, 2018, the Court entered an order approving the Stipulation [doc. 53].

Under the terms of the Stipulation, the debtors must make regular monthly deed of trust payments in the amount of \$4,753.79 commencing on March 1, 2018 ("Deed of Trust Payments"). The debtors also must cure the postpetition arrears in nine equal monthly installments of \$1,465.29 each commencing on March 15, 2018 and continuing through November 15, 2018, and by paying a lump sum in the amount of \$4,753.79 by February 14, 2018 ("Arrears Payments").

On November 16, 2018, Creditor filed a *Declaration re: Default Under Adequate Protection Order* (the "Default Declaration") [doc. 76]. In the Default Declaration, Creditor alleges that the debtors failed to make their Deed of Trust Payments and Arrears Payments for August 2018, September 2018 and October 2018; Creditor also includes a notice of default letter addressed to the debtors' counsel and the debtors.

On November 23, 2018, the debtors filed an opposition to the Default Declaration (the "Opposition") [doc. 78]. In the Opposition, although the Stipulation provides that the debtors would be given notice and 14 days to cure any arrears, the debtors represent that no notice of default was provided to the debtors or the debtors' counsel. The debtors also dispute Creditor's accounting of their payments. The debtors attached two types of proof of payment in support of their position.

The first type is in the form of redacted bank statements, which show that the debtors

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

9:30 AM

**CONT... James Tomas and Imelda Tomas**  
made the following payments:

**Chapter 13**

Month	Deed of Trust Payments	Arrears Payments
February 2018	N/A	\$4,753.79
March 2018	\$4,753.79	\$1,465.29
April 2018	\$4,753.59	\$1,465.29
May 2018	\$4,791.33	None
June 2018	\$4,791.33	None
July 2018	\$9,582.66 [FN1]	None
August 2018	None	None
September 2018	None	None
October 2018	\$4,791.33	None

The second type of proof of payment is in the form of images of either checks or carbon copies of checks for Arrears Payments for May 2018, June 2018, July 2018, August 2018 and October 2018 (the "Checks"). Some of the Checks are illegible; neither the payee nor the amount can be determined. The debtors acknowledge that Creditor did not cash the Checks. The debtors further state that they mistakenly did not make their September 2018 Deed of Trust Payment and Arrears Payment.

The debtors include an image of a check written on November 23, 2018, in the amount of \$7,328.95; this check is intended to replace the never-cashed Checks and to pay the September 2018 Arrears Payment. This amount would cure arrears for five Arrears Payments. However, the debtors are missing six Arrears Payments.

On December 12, 2018, Creditor filed a reply to the Opposition (the "Reply") [doc. 80]. In the Reply, Creditor states that the payments reflected in the redacted bank statements were received and credited, and that the discrepancy lies solely with the Checks. If Creditor receives and cashes the check written on November 23, 2018, the

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

9:30 AM

**CONT... James Tomas and Imelda Tomas**

**Chapter 13**

debtors still would be missing the September 2018 Deed of Trust Payment and an Arrears Payment.

**FOOTNOTES**

1. James Tomas states that when he called to make the July 2018 Deed of Trust Payment, the customer service representative told him that he would need to make two payments because he was late on the July 2018 payment. Mr. Tomas believed that he was making his July 2018 and August 2018 Deed of Trust Payments.  
Declaration of James Tomas, ¶ 3.

**Party Information**

**Debtor(s):**

James Tomas

Represented By  
R Grace Rodriguez

**Joint Debtor(s):**

Imelda Tomas

Represented By  
R Grace Rodriguez

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

1:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#12.00 Pretrial conference re: remand

from: 6/13/18; 6/17/18; 10/10/18, 11/7/18

Docket 577

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule 7016-1(b)(2)(E), the debtor did not provide a concise summary of the subject of each witness's testimony. In addition, although the debtor may cross-examine any witness called by the creditors, the debtor cannot call any witness that is not listed on *the debtor's* witness list. As such, if the debtor intends to call any of the creditors' witnesses, the debtor must list those witnesses on his witness list. Prior to this continued pretrial conference, the debtor should file an amended witness list and include a summary of each witness's testimony. The debtor also must add any additional witnesses he intends to use at trial (with a concise summary of the testimony of each witness).

Regarding any exhibits that are pleadings or orders, the Court may take judicial notice of the pleadings and orders. As to the debtor's deposition excerpts, the debtor may be entitled to use those at trial, to the extent that use is in accordance with Local Bankruptcy Rule 7030-1(b).

The Court will not otherwise rule on the creditors' evidentiary objections to the debtor's exhibits at this time. The Court will assess evidentiary objections to exhibits as the exhibits are introduced at trial. The Court also will assess any evidentiary objections to testimony by witnesses, including Shirlee L. Bliss, who is listed as a witness for both parties, at trial.

As noted during the prior pretrial conference, no later than **January 21, 2019**, the parties must file a joint witness schedule setting forth the time and date (e.g., which day and a.m. or p.m.) for the testimony and cross-examination of each witness. No later than **January 7, 2019**, the creditors must file and serve their trial brief. No later than **January 14, 2019**, the debtor must file and serve his trial brief. No later than **January 21, 2019**, the creditors must file and serve any reply brief.

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

1:30 PM

**CONT... Kevan Harry Gilman**

**Chapter 7**

The Court will prepare a pretrial order.

**Party Information**

**Debtor(s):**

Kevan Harry Gilman

Represented By  
Mark E Ellis

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

1:30 PM

**1:17-10030 Maria Minicucci Miller**

**Chapter 7**

Adv#: 1:17-01031 Isromorphism Holdings, LLC v. Miller

**#13.00** Pretrial conference re complaint to determine non-dischargeability of debt

fr. 4/4/18, 11/7/18

Docket 1

**Tentative Ruling:**

*See* calendar no. 15.

Plaintiff's appearance at the pretrial conference is excused.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Minicucci Miller

Represented By  
Alon Darvish

**Defendant(s):**

Maria Minicucci Miller

Represented By  
William J Smyth

**Plaintiff(s):**

Isromorphism Holdings, LLC

Represented By  
Talin V Yacoubian

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

1:30 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #14.00** Status conference re first amended adversary complaint for non-dischargeability and objection to discharge pursuant to:
1. 11 U.S.C. sec 523 (a)(2)
  2. 11 U.S.C. sec 523 (a)(6)
  3. 11 U.S.C. sec 727 (a)(2)(A)

Docket 4

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 7/15/19.

Deadline to complete one day of mediation: 7/31/19.

Deadline to file pretrial motions: 8/16/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/4/19.

Pretrial: 1:30 p.m. on 9/18/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

1:30 PM

CONT... Nasrollah Gashtili

Chapter 11

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**Defendant(s):**

Nasrollah Gashtili

Pro Se

**Plaintiff(s):**

VitaVet Labs, Inc.

Represented By  
Michael H Raichelson

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

2:30 PM

**1:17-10030 Maria Minicucci Miller**

**Chapter 7**

Adv#: 1:17-01031 Isromorphism Holdings, LLC v. Miller

**#15.00** Plaintiff's motion to strike Maria Minicucci Miller's answer  
and enter default judgment

Docket 42

**Tentative Ruling:**

The Court will strike the defendant's answer pursuant to Federal Rule of Civil Procedure 16(f)(1)(A) and (C) and 37(b)(2)(A)(iii), based on the defendant's failure to participate in drafting a joint pretrial stipulation, failure to file any documents in preparation for the pretrial conference and failure to appear at the pretrial conference. The defendant also has not responded to the plaintiff's motion for default judgment.

The Court also will direct the entry of default against the defendant and grant the plaintiff's motion for default judgment pursuant to 11 U.S.C. § 523(a)(2)(A). Movant will be awarded a judgment for the principal amount of \$1,550,260.53.

Movant must submit an order striking the Answer and directing entry of default against the defendant within seven (7) days. Within seven (7) days after entry of that order, movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Maria Minicucci Miller

Represented By  
Alon Darvish

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

2:30 PM

**CONT... Maria Minicucci Miller**

**Chapter 7**

**Defendant(s):**

Maria Minicucci Miller

Pro Se

**Plaintiff(s):**

Isromorphism Holdings, LLC

Represented By  
Talin V Yacoubian

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

2:30 PM

**1:18-10071 LOST COAST RANCH INC.**

**Chapter 7**

Adv#: 1:18-01102 Ocean Ranch LPFN, LLC v. Lost Coast Ranch, Inc. et al

**#16.00** Trustee's Motion for 1) Order dismissing the adversary proceeding as to the debtor pursuant to FRCP 41(b) and FRBP 7041 and 2) Non-opposition to the remand of the remaining claims in the complaint to Superior Court

Docket 10

**Tentative Ruling:**

*See* calendar no. 17.

**Party Information**

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Defendant(s):**

Lost Coast Ranch, Inc.

Pro Se

Joseph Flores Beauchamp

Pro Se

DOES 1 through 10, inclusive

Pro Se

**Plaintiff(s):**

Ocean Ranch LPFN, LLC

Pro Se

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, December 19, 2018**

**Hearing Room 301**

2:30 PM

**1:18-10071 LOST COAST RANCH INC.**

**Chapter 7**

Adv#: 1:18-01102 Ocean Ranch LPFN, LLC v. Lost Coast Ranch, Inc. et al

**#17.00** Status conference re notice of removal and order to show cause re remand

fr. 10/31/18

Docket 1

**Tentative Ruling:**

In light of the plaintiff's opposition to the motion to dismiss [doc. 17], the Court will not dismiss this adversary proceeding for failure to prosecute at this time. However, contrary to Local Bankruptcy Rule 7016-1(a) and the Court's Order to Show Cause [doc. 3], the plaintiff still has not filed a status report.

As such, the Court may continue the motion to dismiss and the status conference to **1:30 p.m. on January 23, 2019**. No later than **January 9, 2019**, the parties must file a joint status report. If the plaintiff does not timely file a status report in accordance with the Local Bankruptcy Rules, and take other appropriate action with respect to this removed adversary proceeding, the Court may dismiss this adversary proceeding for failure to prosecute.

Although the plaintiff asserts that defendant Joseph Flores Beauchamp has been effectively served, it is unclear if the plaintiff *timely* served the summons issued by the state court on Mr. Beauchamp. If Mr. Beauchamp has not been effectively served to date, as concerns the complaint at issue, this Court may not have personal jurisdiction as to the plaintiff's claims against Mr. Beauchamp.

The plaintiff has filed a proof of claim against the debtor's estate. Given that the parties may litigate the liability of the estate (if any) in that context, will the plaintiff and the chapter 7 trustee stipulate to remanding this adversary proceeding as to defendant Joseph Flores Beauchamp?

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, December 19, 2018

Hearing Room 301

---

2:30 PM

CONT... LOST COAST RANCH INC.

Chapter 7

**Debtor(s):**

LOST COAST RANCH INC.

Represented By  
Ronald A Norman

**Defendant(s):**

Lost Coast Ranch, Inc.

Pro Se

Joseph Flores Beauchamp

Pro Se

DOES 1 through 10, inclusive

Pro Se

**Plaintiff(s):**

Ocean Ranch LPFN, LLC

Pro Se

**Trustee(s):**

David Seror (TR)

Represented By  
Talin Keshishian  
Richard Burstein

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 20, 2018**

**Hearing Room 301**

1:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#0.10** Post-Confirmation status conference re chapter 11 case

fr. 10/13/16; 2/9/17, 4/20/17; 6/22/17; 9/14/17; 11/9/2017;  
1/11/18; 1/25/18; 3/15/18; 7/19/18; 8/23/18; 12/6/18

Docket 1

**Tentative Ruling:**

*See* calendar no. 1.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 20, 2018**

**Hearing Room 301**

2:00 PM

**1:16-12203 Alfredo Gonzalez Villapando**

**Chapter 11**

**#1.00** Motion for entry of discharge, final decree and order closing  
Debtor's Chapter 11 Case

Docket 271

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Alfredo Gonzalez Villapando

Represented By  
Giovanni Orantes  
Luis A Solorzano



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 20, 2018**

**Hearing Room 301**

2:00 PM

**1:18-10715 Nasrollah Gashtili**

**Chapter 11**

**#2.00** Debtor's motion for entry of order authorizing sale of real property located at 23311 Park Soldi, Calabasas, California free and clear of certain liens, claims and interests

Docket 98

**Tentative Ruling:**

The Court intends to continue the hearing in order for the objecting lienholder to file a responsive brief addressing the debtor's ability to sell the real property at issue, when the lienholder has not consented to the proposed sale of the property free and clear of its lien and the sale proceeds will be insufficient to pay that lien in full.

**Party Information**

**Debtor(s):**

Nasrollah Gashtili

Represented By  
Andrew Goodman

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Thursday, December 20, 2018**

**Hearing Room 301**

2:00 PM

**1:18-12494**    **Elas, LLC dba Calnopoly, LLC**

**Chapter 11**

**#3.00**    Debtor's motion for order authorizing use of cash collateral

fr. 12/6/18

Docket    11

**Tentative Ruling:**

Grant.

Movant must submit the order within seven (7) days.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elas, LLC dba Calnopoly, LLC

Represented By  
Anthony Obehi Egbase